

# **REPORT ON THE LICENSING BOARD FOR GENERAL CONTRACTORS**

**Montgomery, Alabama**



**Department of  
Examiners of Public Accounts**

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August 24, 2006

Representative Howard Sanderford  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Licensing Board for General Contractors** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Licensing Board for General Contractors**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones  
Chief Examiner



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## **PROFILE**

### **PURPOSE/AUTHORITY**

The Licensing Board for General Contractors licenses and regulates the practice of contracting and subcontracting in Alabama. The board operates under the authority of the *Code of Alabama 1975*, Sections 34-8-1 through 34-8-28.

### **BOARD CHARACTERISTICS**

<b>Members</b>	5
<b>Term</b>	5 year staggered terms
<b>Selection</b>	<ul style="list-style-type: none"><li>• Appointed by the Governor</li><li>• Governor may remove members without cause</li><li>• Governor designates the chairman, vice-chairman and secretary/treasurer</li></ul>
<b>Qualifications</b>	<ul style="list-style-type: none"><li>• All must have 10 years of experience as a contractor,</li><li>• One must have majority of business in highway construction</li><li>• One must have a majority of business in public utility construction</li><li>• One must have majority of business in building construction</li></ul>
<b>Racial Representation</b>	No specific statutory requirement. No minority members
<b>Geographical Representation</b>	No statutory requirement
<b>Consumer Representation</b>	No statutory requirement.
<b>Other Representation</b>	The membership of the board shall be inclusive and reflect the racial, gender, geographical, urban/rural, and economical diversity of the state.
<b>Compensation</b>	\$200 per day for attending sessions of the board or its committees, and for time actually spent in necessary travel in attending meetings of the board or its committees. In addition, board members receive travel and per diem as paid to state employees.

## **OPERATIONS**

### **Administrator**

Joseph C. Rogers, Executive Secretary  
Annual salary \$80,661.60  
Unclassified merit system employee  
Appointed by the board  
Salary set by the board and approved by the State Personnel Department.

### **Location**

2525 Fairlane Drive  
Montgomery, AL 36116

### **Type of License**

General contractor and subcontractor licenses

#### As of 5/1/2006

General Contractor	5,374
Subcontractor	<u>1,930</u>
Total Licensees	7,304

### **Renewal**

Licenses renew annually throughout the year, on a monthly schedule determined by the first letter of the surname or company name of the renewing licensee.

Licenses expire on the last day of the renewal month. Renewal applications are due 30 days prior to the end of the renewal month. The board grants general contractors a 90-day grace period after the last day of the renewal month to provide a current audited financial statement, which is required for renewal. Any renewal application received from 90 to 365 days after the last day of the renewal month is assessed a \$50 late renewal fee. Licensees with expired licenses who have not applied for renewal 1 year and a day after their renewal month must apply as new applicants.



## **Examinations**

In March 2003, the board began examining applicants for a general contractor license. The examination is administered and scored by PSI Examination Services. Subcontractors are not examined.

Approved applicants pay the license fee directly to the examination provider. The fee allows applicants a one year window in which to schedule an examination.

Examinations are given at four testing sites around Alabama in Birmingham, Huntsville, Mobile and Montgomery.

Applicants are allowed unlimited testing attempts within the one-year window.

Examination Statistics:

<b>Year</b>	<b>Pass</b>	<b>Fail</b>	<b>Total</b>
<b>2003 (1)</b>	220 (82%)	48 (18%)	268
<b>2004</b>	491 (82%)	108 (18%)	599
<b>2005</b>	496 (82%)	109 (18%)	605
<b>2006 (2)</b>	169 (89%)	21 (11%)	190
<b>Total</b>	1376	286	1662

1. From March 2003
2. Through April 2006

## **Continuing Education**

No statutory requirement

## **Reciprocity**

The board has no specific statutory requirement to provide reciprocal licenses, however; it does have reciprocal license agreements with Arkansas, Louisiana, Mississippi and Tennessee. If an applicant has been licensed in good standing for 3 or more years, the industry portion of the examination will be waived. Reciprocal states may require their business law portion of the examination be taken.

## **Employees**

18, of which 6 are minority employees

<b>Legal Counsel</b>	Kathleen A. Brown, Esq., a private attorney 423 South Hull Street, Suite 2F Montgomery, AL 36104
<b>Subpoena Power</b>	No
<b>Internet Presence</b>	<a href="http://www.genconbd.state.al.us">www.genconbd.state.al.us</a> . The boards' web site contains: <ul style="list-style-type: none"> <li>• Home page with contact information</li> <li>• Application instructions</li> <li>• Renewal information</li> <li>• Reciprocity information</li> <li>• Forms</li> <li>• Testing information</li> <li>• Licensee Roster</li> <li>• Law</li> <li>• Rules and Regulations</li> <li>• FAQs</li> <li>• Related links.</li> </ul>
<b>Attended Board Member Training</b>	The executive secretary, Joseph Rogers, and 3 board members, Keith Andrews, Chip Grizzle, and Wayne Gordon

## **FINANCIAL INFORMATION**

<b>Source of Funds</b>	Licensing fees
<b>State Treasury</b>	Yes
<b>Unused Funds</b>	Any unused balance over \$30,000 at fiscal year end is to be transferred to the general fund.

## SIGNIFICANT ITEMS

1. **Records of the board's complaint and disciplinary actions are not well coordinated or easily accessed and lack some components necessary to provide a complete history and status of complaints and associated disciplinary actions.** Our efforts to obtain complaint statistics revealed the following conditions:
  - **The board maintains two "violations" databases, one by the board's attorney and one by the board's executive secretary.** The databases are not structured similarly and contain different and sometimes conflicting information. Neither database contains complete information. Differences in structure and content include:
    - A. **Violations are numbered by different methods.**
    - B. **To obtain complete information about the payment of fines, both databases must be reviewed.** The attorney's violation database includes information concerning the process by which fines are collected and may include information concerning changes to recommended fines or actions made by the board. The board's database includes the date the fine was paid, but no information on the collection process or any changes imposed by the board. The attorney's violation database is sorted alphabetically by the violator's name, which assists in determining if a general or sub contractor has past violations. The board's violation database includes the location (city) of the violation which assists in determining the overall violations in any given area.
    - C. **Entries concerning violations may be found in one database, but may be missing in the other.** When comparing the two databases to determine the result of investigations for inclusion in this report, I found
      - For 2003-04, 2004-05 and 2005-06 (to 5/06) combined, 50 entries on the attorney's database were not in the board's database and 12 entries in the board's database were not on the attorney's database.
      - In 2004-05, two entries concerning fines contained differing information. In the first entry, the board recorded \$1,500 collected and the attorney recorded \$2,000 collected. In the second entry, the board recorded collecting \$6,500 and the attorney recorded \$5,000 collected. Originally, the attorney's database noted the fine

being \$6,500, but was amended to show the fine being reduced to \$5,000.

- In 2005-06, one entry concerning a fine contained differing information. The involved contractor was charged with 7 separate violations. The attorney's database records an original fine set at \$9,500 for all violations combined. The board's database records \$4,500 for all violations combined.

**D. No one location at the board's offices contains all information necessary to constitute a complete set of files for a violation. Some board records are maintained at the attorney's private office.** Information on violations, administrative fines and disciplinary actions is filed in various locations, including the private offices of the board's attorney. Information on violations may be found in the minutes of meetings, the violation agenda reviewed at meetings, board meeting files, the board's violation database, the licensee files, the licensing database program, deposit records and the executive secretary's memory. The attorney keeps a violation database and case files concerning the various violations at her private office. No one place contains a complete history of a violation from the investigator's report through the deposit of any fine assessed. Some information concerning board decisions about the setting of fines and/or disciplinary actions was not recorded in the minutes of meetings, the violation agenda or the recommended action sheet. Without the memory of the executive secretary, the board's attorney or board members, information concerning changes in fines and disciplinary actions cannot be ascertained. Some information concerning the collection process for fines is located only in the board attorney's private offices.

The *Code of Alabama 1975*, Section 36-12-2, states, "All public officers and servants shall correctly make and accurately keep in and for their respective offices or places of business all such books or sets of books, documents, files, papers, letters and copies of letters as at all times shall afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant and from which the actual status and condition of such activities and business can be ascertained without extraneous information, and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved and guarded from mutilation, loss or destruction."

2. **Responses from licensees indicate that unlicensed contractors and subcontractors; the cost of insurance; and obtaining a legal, qualified workforce are significant issues.**

Of the 46 general contractors that responded to our questionnaire, 24 responded to the question “What do you think is the most significant issue currently facing the practice of general contracting in Alabama?” Their replies indicate the issues of;

The board ensuring qualified licensees (29%),  
The cost of insurance (21%),  
The number of unlicensed contractors and subcontractors performing work (17%)  
Obtaining a legal, qualified workforce (13%)

Of the 52 subcontractors that responded to the questionnaire, 30 replied to the question “What do you think is the most significant issue currently facing the practice of general and sub-contracting in Alabama?” Their replies indicate the issues of

Unlicensed and uninsured contractors and subcontractors performing work (47%)  
The cost of insurance for subcontractors (23%)

## **STATUS OF PRIOR FINDINGS**

All findings and significant items from our most recent prior routine legal compliance examination and sunset review of the board have been resolved except the following:

**1. Prior Finding:** The board appears in some cases to be awarding a higher classification of project bid limit than is authorized by the board’s licensing law. The board’s licensing statutes provide the following with regard to the size of projects allowed by a license issued by the board.

The *Code of Alabama 1975*, Section 34-8-2 provides that, “The maximum bid limits shall be set by the formula of not more than 10 times either the net worth or working capital, whichever is the lesser amount, as shown by the applicant’s latest financial statement and designated in the classification set out herein that is the closest to this amount. Should the financial statement of the applicant fail to substantiate the limits requested, *further consideration* may be given to (1) the present market value in lieu of book value of listed assets when properly supported with substantiating evidence, and (2) a combined statement of the applicant that includes other wholly owned or substantially owned interests.”

The board has adopted an administrative rule 230-X-1-.02(c), which allows the board to award a one-step higher classification than the one indicated by application of the formula when the formulation is applied to the total of net worth or working capital when added to the “*further consideration*” items.

By adopting a rule that authorized the board to award a classification that is one step higher than indicated by application of the formula to all submitted resources, the board may have exceeded its statutory authority. Attorney general opinions have stated that regulatory entities have only that authority expressly granted them by statute and that where statutes are specific no other interpretation is authorized.

**Prior Recommendation:** The board should seek an opinion from the attorney general as to whether the board's rule is in conflict with the statutory formula for determining license bid limits.

**Current Status:** On November 22, 2005, the board requested an Attorney General's opinion on the board's adopted rule. On February 9, 2006, the Attorney General declined to give an opinion on the validity of the board's rule, stating, "Opinions of the Attorney General are issued to officials to advise them on questions of law connected with their official duties and must be necessary to the performance of some official act that must be immediately performed. The Board has the authority to adopt rules and regulations consistent with the statutory authority granted to the Board...Rules and regulations properly adopted by the Board are presumed to be valid and enforceable."

In a sample reviewing the application of *Code* Section 34-8-2 and rule 230-X-1-.02(c) to applicants for an upgrade of bid limit during the first quarter of 2006, 3 of 10 applicants provided personal financial statements and received an increase of bid limit higher than if the applicants' business financial statements had been considered alone.

We agree with the Attorney General that the board has the authority to adopt rules and regulations consistent with the statutory authority granted the board. We do not interpret the board's rule as consistent with statutory authority granted the board. Since the Attorney General's opinion did not address this issue, the finding is not considered resolved.

**2. Prior Finding:** **There was no current record of the status of payment of board-ordered fines, and we were not able to determine whether fines were collected as ordered.** Of eleven fines ordered by the board that were selected as a sample, our preliminary testing indicated that two were not collected, three appeared to have been collected at less than the full amount, and one appeared to have been collected for double the amount ordered. Further investigation revealed that some of the apparent discrepancies resulted when the board amended its position on recommended fines without a sufficient record to connect the amendments with the recommendations. Consequently, we were unable to determine whether fines were collected as ordered.

**Prior Recommendation:** The board should accurately and clearly record its actions regarding the amounts of fines and any changes to its position concerning the fines, in the minutes of its meetings. The board should keep a perpetual record of the status of all outstanding fines and the status of attempts to collect such fines.

**Current Status:** The finding is partially resolved in that the board's attorney is keeping a perpetual record of the status of all outstanding fines and the attempts to collect such fines. However, decisions by the board to reject their attorney's recommended fine or action and impose a different fine or action are not adequately documented in any of the records concerning violations, including minutes of board meetings, the violation agenda reviewed during the board's meetings, the attorney's recommended action page, or the databases maintained by the board's attorney and the executive secretary's administrative assistant. Without additional information provided by the board's executive secretary, attorney or members, the reason for changes to fines or disciplinary actions cannot be determined. (See also, SIGNIFICANT ITEM 1)

**3. Prior Finding:** The board does not make timely distribution of funds collected for distribution to public institutions of higher education at the end of the fiscal year, as required by the *Code of Alabama 1975*, Section 34-8-28. The fiscal year ends September 30 of each year but the funds are not transferred until the following April.

The *Code of Alabama 1975*, Section 34-8-28(a) requires that one hundred dollars (\$100) of contractor license fees and fifty dollars (\$50) of sub-contractor license fees, less 5% to the board for administrative expenses, must be distributed "at the end of each fiscal year" to all accredited public institutions of higher education offering a qualifying engineering or building science curriculum.

The board delays distribution of the funds in order to compensate for the effects of a statutory requirement in the *Code of Alabama 1975*, Section 34-8-25, which provides that any un-spent, un-obligated amount in excess of \$30,000 remaining in the board's fund balance at year end must be transferred to the state's General Fund. Since the board by law cannot expend money in excess of its fund balance, the board delays distributing prior year funds that are due the institutions of higher education by six months in order to have sufficient funds to pay for operations during the first part of the new fiscal year while new fee collections accumulate. The \$30,000 cap on the board's end-of-year fund balance has been in the board's statutes since at least as far back as 1951 and now funds approximately only two weeks of operations in the new year.

**Recommendation:** The board should seek remedial legislation.

**Current Status:** The status of this finding is unchanged.

**4. Prior Significant Item:** The board did not maintain adequate information to allow a survey of complainants to determine their satisfaction with the board. During the review, the Examiners of Public Accounts requested a listing of persons making complaints for the period October 1, 1998 through September 30, 2002. The board's legal counsel provided the examiners with a listing two complainants. No complaints received by telephone were included. The board's legal counsel contends that unless a complaint is filed per the *Code of Alabama 1975*, Section 34-8-4(b), it is not a formal complaint. This section states that, "Any person may prefer charges of the fraud, deceit, negligence or misconduct against any general contractor licensed hereunder. The

charges shall be in writing and sworn to by the complainant and submitted to the board.” According to an electronic spreadsheet provided by the executive secretary, 1,009 complaints were received since October 1, 1997. The board’s executive secretary also provided a list of investigations of 175 telephone reported violations during the period of February 2000 through mid-March 2002. Neither list provided sufficient information to determine the person who complained or the nature of the complaint. Separate complaint files were not kept as part of the board’s records.

Most complaints received by the board did not meet the specifications for formal complaints provided by the *Code of Alabama 1975*, Section 34-8-4(b); however, the board accepted and acted upon them. Records of these complaints provided to the Examiners of Public Accounts were not complete. A database provided by the board recorded 1,215 calls for assistance during the 2002 calendar year. Of these, 46 were found to have been violations. As of August 1, 2003, a request [by the examiners] for the disposition of all complaints had not been fulfilled. The board has a new executive secretary who has attempted to complete all requests. However, the board’s attorney compiles the disposition of the complaints. When asked for the dispositions, the board’s attorney stated that she was unable to provide the information because she does not keep it on file after passing the information on to the board. Reviewing the minutes of board meetings and compiling the information could provide the data required, but due to the time constraints on this report, the data could not be gathered from the minutes in a timely fashion.

**Current Status** - The definition of “complaint” remains unchanged in the law. Formal complaints must meet the requirements of the *Code of Alabama 1975*, Section 34-8-4(b) [in writing and sworn to by the complainant and submitted to the board]. Complaints received by other means continue to be processed as “informal” complaints.

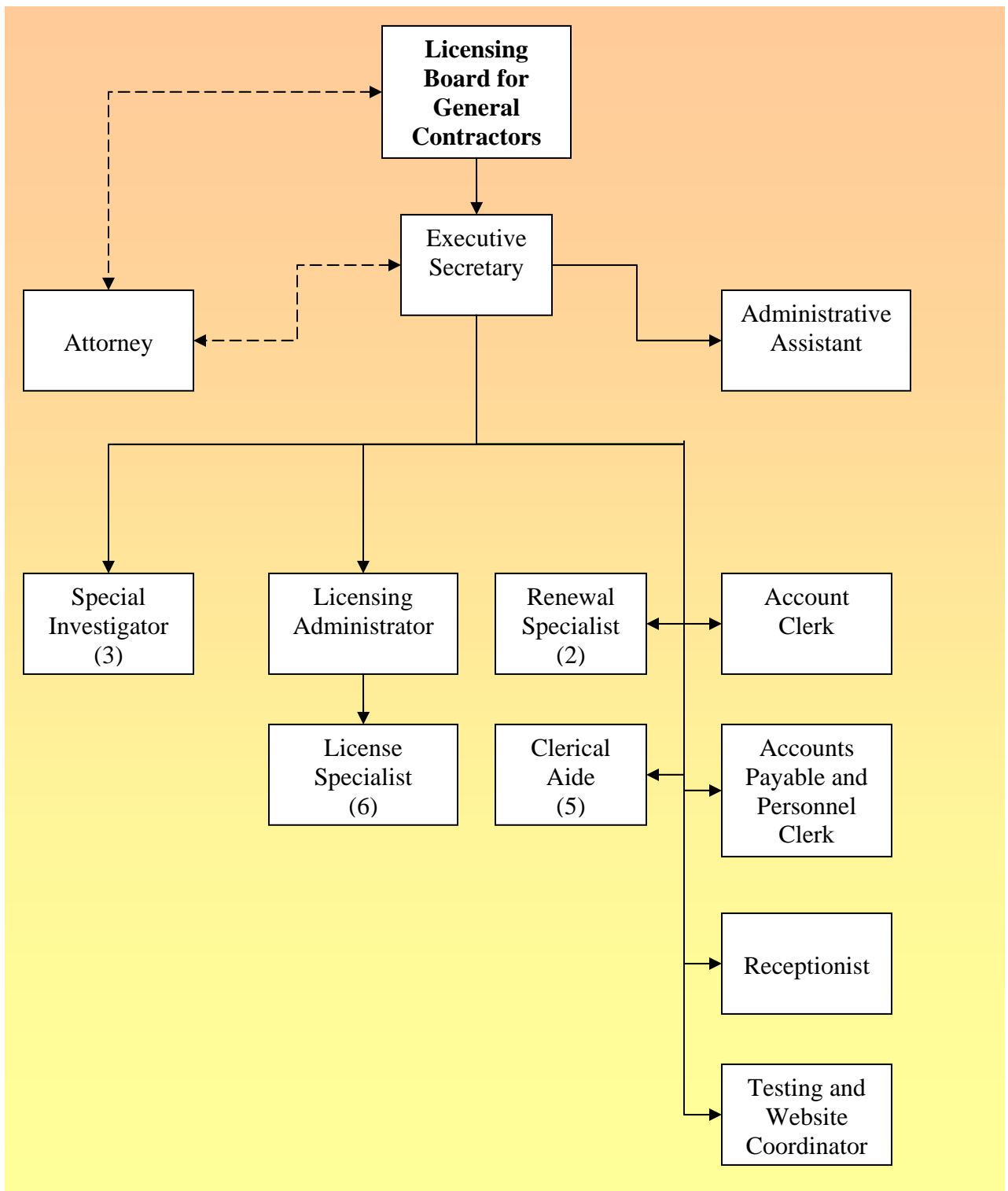
The board continues to accept and act on “informal” complaints; however, the previously available spreadsheet recording informal complaints has not been updated for the past two years due to a misunderstanding by new personnel as to what complaint information should be recorded. There continues to be no central record where the status of all complaints can be reviewed.

Although many informal complaints are anonymous, records do not show the complainant’s name and address for any informal complaints. Consequently, even though the board accepts and acts on informal complaints, the board records insufficient information to allow contact with the complainant at a later date.

Investigators continue to provide a weekly count of all calls for assistance, and for both “founded” and “unfounded” complaints. A conference of the examiner, the investigators and the executive secretary has more clearly defined and expanded the information that investigators have agreed will, in the future, be collected and reported concerning informal complaints.



## ORGANIZATION



## PERSONNEL

The board presently employs eighteen (18) persons, consisting of one executive secretary, who is an unclassified merit system employee, and sixteen classified merit system employees. The executive secretary is appointed by the board, which also approves his salary.

### Schedule of Employees

Classification	Number of Employees	Race		Gender	
		White	Black	Male	Female
Executive Secretary	1	X		X	
Special Investigator	3	X		X	
Account Clerk	1	X			X
Administrative Support Asst III	1		X		X
Administrative Support Asst II	3	X			X
Administrative Support Asst II	3		X		X
Administrative Support Asst I	4	X			X
Administrative Support Asst I	1		X		X
Temporary Clerical Aide	1		X		X
Total	18				

The board contracts for legal services with Kathleen Brown, a private attorney, at \$100/hr plus expenses not to exceed \$56,000. The total of contract payments cannot exceed \$56,000. The contractor is also paid per diem and mileage at the same rate as provided to state employees.

## PERFORMANCE CHARACTERISTICS

**Number of Licensees per Employee** – 406

**Total Expenditure per Licensee (2004-2005 fiscal Year)** - \$195

**Number of Persons per Licensee in Alabama and Surrounding States**

State	Population (Estimate)	Number of Licensees	Persons per Licensee
Alabama	4,527,166	7,304	620
Florida	17,509,827	91,253	192
Georgia	8,925,796	N/A (1)	N/A
Mississippi	2,915,696	10,702	272
Tennessee	5,965,317	14,859	401

1. On 4/20/2006, the Georgia legislature passed HB 1542, which requires contractors to be licensed. The act requires the examination and licensing of local contractors by 12/31/06, with reciprocal licensing to begin 1/1/07. By 1/1/08, all contractors doing business in Georgia must be licensed.

### **Notification to Licensees of Board decisions to Amend Administrative Rules**

The board complied with procedures prescribed in the Administrative Procedure Act (APA), which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Once a rule has completed APA requirements, it is published on the board's website. If the rule concerns new license or license renewal procedures, the requirement is printed on the instructions for completing the new license or renewal license forms. In 2005, revised rules were printed into a booklet and distributed with each new or renewed license. In addition, in 2005, rule changes were addressed at contractors' association meetings, CPA association meetings and meetings with city and county permitting officials.

### **Regulation with Other Entities**

General contractors and subcontractors licensed by the State Licensing Board for General Contractors must also be licensed by the appropriate state professional licensing board of the profession they practice. The Board of Heating and Air Conditioning Contractors, the Alabama Board of Electrical Contractors, and the Alabama Plumbing and Gas Fitting Examination Board are the professional licensing and regulatory boards most likely to interact with the State Licensing Board for General Contractors. The State Licensing Board for General Contractors may also interact with the Home Builders Licensing Board. While licensees of the Home Builders Licensing Board are limited to residential construction, general contractor licensees may perform both commercial and residential construction. General contractors holding valid general contracting licenses prior to January 1992 are grandfathered under the home builder licensing law. Subsequent to January 1992 they must also be licensed by the Home Builders Licensing Board to perform residential contracting.

### **Jurisdiction over Unlicensed Practitioners**

The board has authority under the *Code of Alabama 1975* to pursue unlicensed practice administratively with a fine (Section 34-8-4), by criminal prosecution (Section 34-8-6(a)), by issuing a cease and desist order (Section 34-8-6(c)), or by requesting and injunction (Section 34-8-6(c)).

### **Complaints**

The board segregates complaints into two types, formal and informal. The *Code of Alabama 1975*, Section 34-8-4 provides that, "Any person may prefer charges of the fraud, deceit, negligence, or misconduct against any general contractor licensed hereunder. The charges shall be in writing and sworn to by the complainant and

submitted to the board.” Complaints that meet these statutory requirements are considered to be formal complaints. All other complaints, such as complaints received by telephone, e-mail, fax, or face-to-face interaction are defined by the board as informal complaints.

### **Complaint Resolution**

Board action on violations resulted in the following:

<b>FY 2003-2004</b>	<b>General Contractors</b>	<b>Subcontractors</b>	<b>Owners</b>	<b>Dealers</b>	<b>Permit Officials</b>
<b>Fines</b>	91	71	7	3	0
<b>Warnings</b>	0	0	34	0	0
<b>No Action</b>	1	0	1	0	0
<b>Explanations</b>	0	0	0	0	0
<b>Other</b>	0	0	0	0	0
<b>Total (208)</b>	<b>92</b>	<b>71</b>	<b>42</b>	<b>3</b>	<b>0</b>

<b>FY 2004-05</b>	<b>General Contractors</b>	<b>Subcontractors</b>	<b>Owners</b>	<b>Dealers</b>	<b>Permit Officials</b>
<b>Fines</b>	107	75	6	0	0
<b>Warnings</b>	3	0	49	0	1
<b>No Action</b>	3	0	2	0	0
<b>Explanations</b>	0	0	0	0	0
<b>Other</b>	1	0	1	0	0
<b>Total (248)</b>	<b>114</b>	<b>75</b>	<b>58</b>	<b>0</b>	<b>1</b>

<b>FY 2005-06 (thru 5/25/06)</b>	<b>General Contractors</b>	<b>Subcontractors</b>	<b>Owners</b>	<b>Dealers</b>	<b>Architects</b>	<b>Permit Officials</b>
<b>Fines</b>	113	79	5	0	1	0
<b>Warnings</b>	2	0	53	0	0	0
<b>No Action</b>	7	0	6	0	1	0
<b>Explanations</b>	2	0	0	0	0	0
<b>Other</b>	13 (1)	12 (1)	7 (1)	0	0	0
<b>Total (301)</b>	<b>137</b>	<b>91</b>	<b>71</b>	<b>0</b>	<b>2</b>	<b>0</b>

Source of Information: State Licensure Board for General Contractors Violations Report

1. Violations pending board hearing.

The following chart shows the collection of fines assessed for the 2003-04, 2004-05 and 2005-06 (through 5/25/06) fiscal years:

<b>Fiscal Year</b>	<b>Fines Assessed</b>	<b>Collected in FY 04</b>	<b>Collected in FY 05</b>	<b>Collected in FY 06</b>	<b>Net Yet Collected</b>	<b>Closed by Administrative Action</b>
2003-04	\$289,000	\$205,650	\$64,000	0	\$5,000	\$14,350

2004-05	\$379,500	0	\$275,750	\$58,000	\$27,500	\$18,250
2005-06	\$403,500	0	0	\$303,250	\$100,250	0
Total	\$1,072,000	\$205,650	\$339,750	\$361,250	\$132,750	\$32,600

Source of Information: State Licensure Board for General Contractors Violations Report

In a sample of investigated complaints, the elapsed time averaged 43 days, with a median elapsed time of 50 days.

### **Complaint Process**

#### **Investigative Phase**

For formal complaints, the board utilizes a complaint form that is required to be signed and notarized and submitted to the board. Informal complaints may be received in any other manner, and a licensing specialist collects contact information.

The investigators become the complainant of record for violations discovered through informal anonymous complaints or during impromptu reviews of building sites by the investigators,

Complaints are assigned to the investigator who covers the area of the state indicated by the complaint information.

If the investigator finds sufficient cause to believe that a violation of the board's licensing law has occurred, the offender's work is stopped, the offender is informed of the requirements of law, and the offender is informed of the board's intention to take the matter up at its next meeting. The investigator prepares a report and sends it to the executive secretary and to the board's attorney.

#### **Anonymous Complaints**

Anonymous complaints are accepted.

**Recommendation Phase**      When the board's attorney receives the investigator's report, she researches the background of persons and companies involved for prior violations. She evaluates the current circumstances as reported by the investigator and the results of prior violations, if any. She then recommends a course of action for the board. Most commonly, the course recommended is a consent agreement that includes a fine. The amount of the fine is based on the number of prior violations and the severity of the current violation. Unlicensed contractors and subcontractors are required to obtain a license before work can be resumed on a stopped project. Warning letters are issued that serve notice of a required appearance before the board to explain why the violation occurred and what measures will be taken to ensure that the violation will not occur again. The attorney prepares a recommended action report, and the case is submitted to the board at its next regular meeting for consideration.

**Board Action Phase**      Informal complaints - The board reviews the cases resulting from informal complaints at its next available meeting. The board deliberates the case and considers the attorney's recommended action. The board then votes to accept or reject the action recommended. If the recommended action is rejected, the board substitutes other actions.

Formal complaints - For formal complaints, an administrative judge presides over administrative hearings to prosecute a licensee for violations of the licensing law or the board's rules. The accused is served notice of the charges and the date and time set for the hearing by a process server or by certified mail. The accused and his lawyer, if he so desires, have the right to appear before the administrative judge and to cross examine witnesses and present evidence and to present testimony in defense. The administrative judge makes a record of findings of fact and recommends a penalty consistent with the findings of the board. The administrative judge makes a record of findings of fact and recommends a penalty consistent with the findings of the board. The board reviews the findings and recommendations of the administrative judge and accepts, rejects or amends the administrative judge's recommendation. The board then notifies the accused of its ruling. The rules governing administrative hearings provided in the Administrative Procedure Act are followed in the formal hearings.

Resolution Phase	<p>The board sends all offenders a letter along with a consent administrative order for the offender to sign and return. The letter states that the signed order and fine must be returned within 30 days of receipt of the letter. Once the fine and consent administrative order are received, the fine is deposited into the board's fund, a license is issued to unlicensed contractors and subcontractors (if they have submitted an application) and all documents are filed. If the fine is not paid within 30 days, the attorney begins contacting the offender to collect the fine and required documents. The unofficial grace period appears to be as long as two years while the attorney continues to attempt collecting fines. Eventually, some fines have to be administratively closed; although, notice is posted in the licensee's (if the offender was licensed) computer file that a license cannot be issued, updated, or renewed by unless the fine is paid in full. Reasons for closing fines include the offender going bankrupt, the offender relocating to another state, or the offender ignoring the fine.</p>
Communication with Complainants	<p>Most informal complainants request anonymity; therefore, there is little opportunity to communicate the result of the complaint to the complainant.</p>

The board creates several records that concern complaints, subsequent investigations and the resolution of the investigations. While the records show an effort to record the investigation and resolution process, the records are not compared to assure accuracy of information input. Complaint processing information gathered by board staff, although recorded in several records, is not well coordinated and easily accessed and lacks some components necessary to provide a complete picture of complaint resolution.

## SMART BUDGETING

The State Licensing Board for General Contractors has implemented a statewide strategic planning system as required by the Governor. The Board has developed a Strategic Plan Summary that identifies the agency's mission, purpose multi-year goals, a vision for the future and a level plan of how they will achieve the stated goals. The Board has also submitted a Quarterly Performance Report that compares actual accomplishments to the accomplishments planned. See the Appendix for smart budget documents.

## FINANCIAL INFORMATION

### Schedule of Fees

<u><i>Fee</i></u>	<u><i>Code of Alabama 1975</i></u>	<u><i>Amount</i></u>
	<b>Section</b>	
General Contractor License Fee	34-8-2(a)	\$300
General Contractor Renewal Fee	34-8-2(a)	\$200
Sub Contractor License Fee	34-8-7(c)(1)	\$150
Sub Contractor Renewal Fee	34-8-7(c)(1)	\$100
Late Renewal Penalty	34-8-2(a)	\$50
Administrative Fine for Violations	34-8-4(a)	\$500 to \$5,000
Suit for Injunction Fine	34-8-6(c)	Up to \$5,000 plus attorney fees for each offense
Copy Fee	36-12-41	\$1 per copy

### Distribution to Higher Education

The *Code of Alabama 1975*, Section 34-8-28(a) requires that one hundred dollars (\$100) from each fee for application and renewal of contractor license and fifty dollars (\$50) from each fee for application and renewal of subcontractor license is to be distributed by the board at the end of each fiscal year to:

- (1) All accredited public institutions of higher education offering American Council for Construction Education “Accredited courses in building science,
- (2) All accredited public institutions of higher education offering courses in building science which are in the candidate status of American Council for Construction Education, and
- (3) Institutions of higher education offering courses leading to a bachelor of civil engineering degree which offer courses in highway engineering and construction at the undergraduate and graduate level and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET).

The funds are distributed on a pro-rata share among the institutions, based upon the number of students enrolled in the programs.

Section 34-8-28(b) provides that revenue derived from the additional fees for all licenses shall be distributed for (1) building science (general construction) purposes and (2) civil engineering (highway engineering or construction, or both) purposes. Contractors are given an opportunity to select which program they want to support



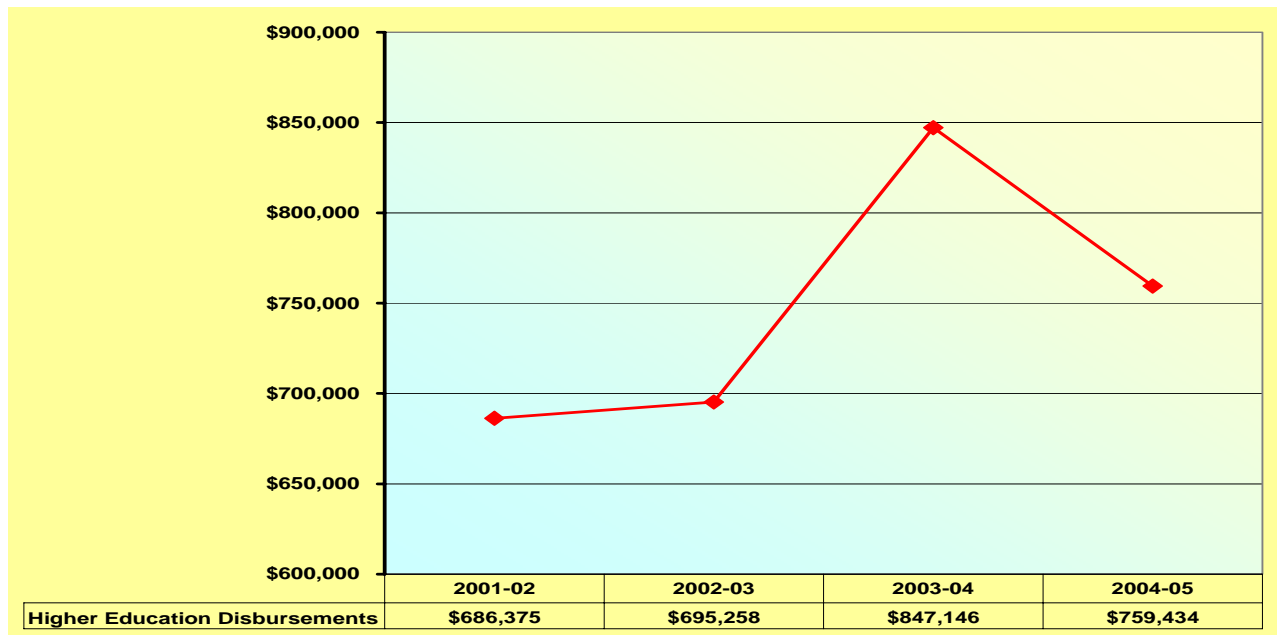
Section 34-8-28(g) allows the board to retain 5% of the application and renewal fees for the administrative expenses of distributing the funds.

Fee	Retained by Board For Administrative Fee (5%) Section 34-8-28(g)	Distributed to Higher Education Specific Disbursement Section 34-8-28(a)	Additional Disbursement Section 34-8-28(b)
General Contractor Application (\$300)	\$15	\$100	\$185
General Contractor Renewal (\$200)	\$15	\$100	\$85
Subcontractor Application (\$150)	\$7.50	\$50	\$92.50
Subcontractor Renewal (\$100)	\$5.00	\$50	\$45

The Board makes the distributions to the following colleges and universities as requested by the licensees either for building science or civil engineering schools:

- (4) Auburn University
- (5) Jefferson State Community College
- (6) University of Alabama
- (7) University of Alabama at Birmingham
- (8) University of Alabama at Huntsville
- (9) University of Alabama at Tuscaloosa (Scholarship Fund)
- (10) University of South Alabama.

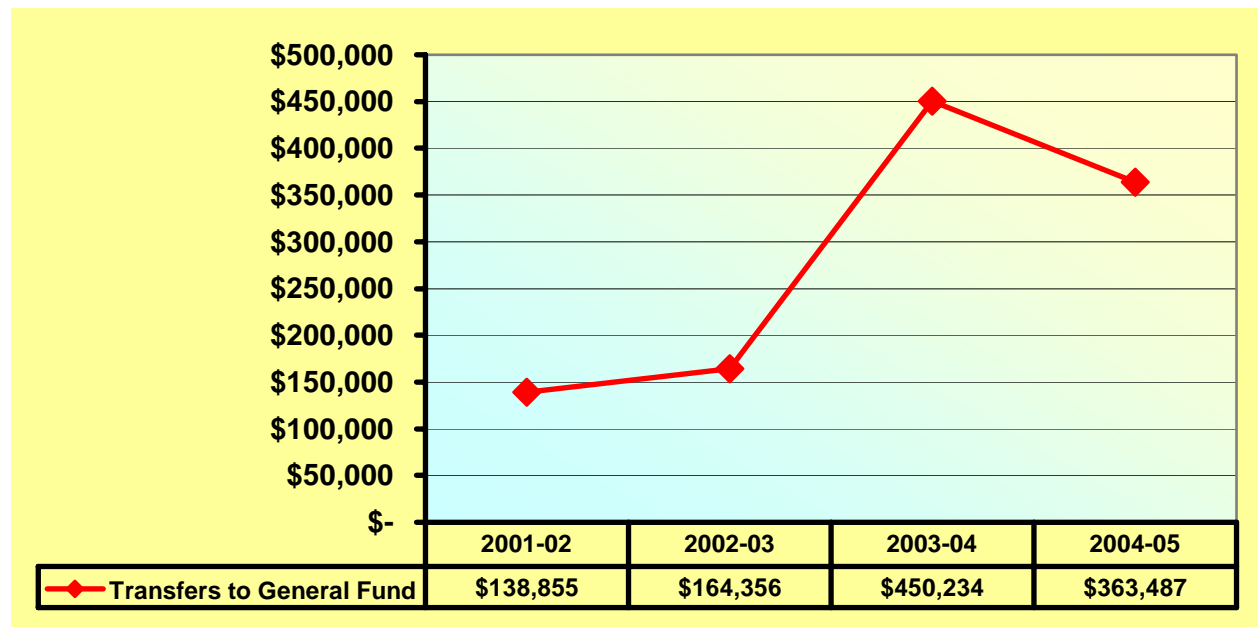
### Distribution to Higher Education (Chart)



### Transfer to General Fund

The *Code of Alabama 1975*, Section 34-8-22 requires the board to transfer to the general fund all year-end balances in its fund that exceed \$30,000.

### Transfer to General Fund (Chart)



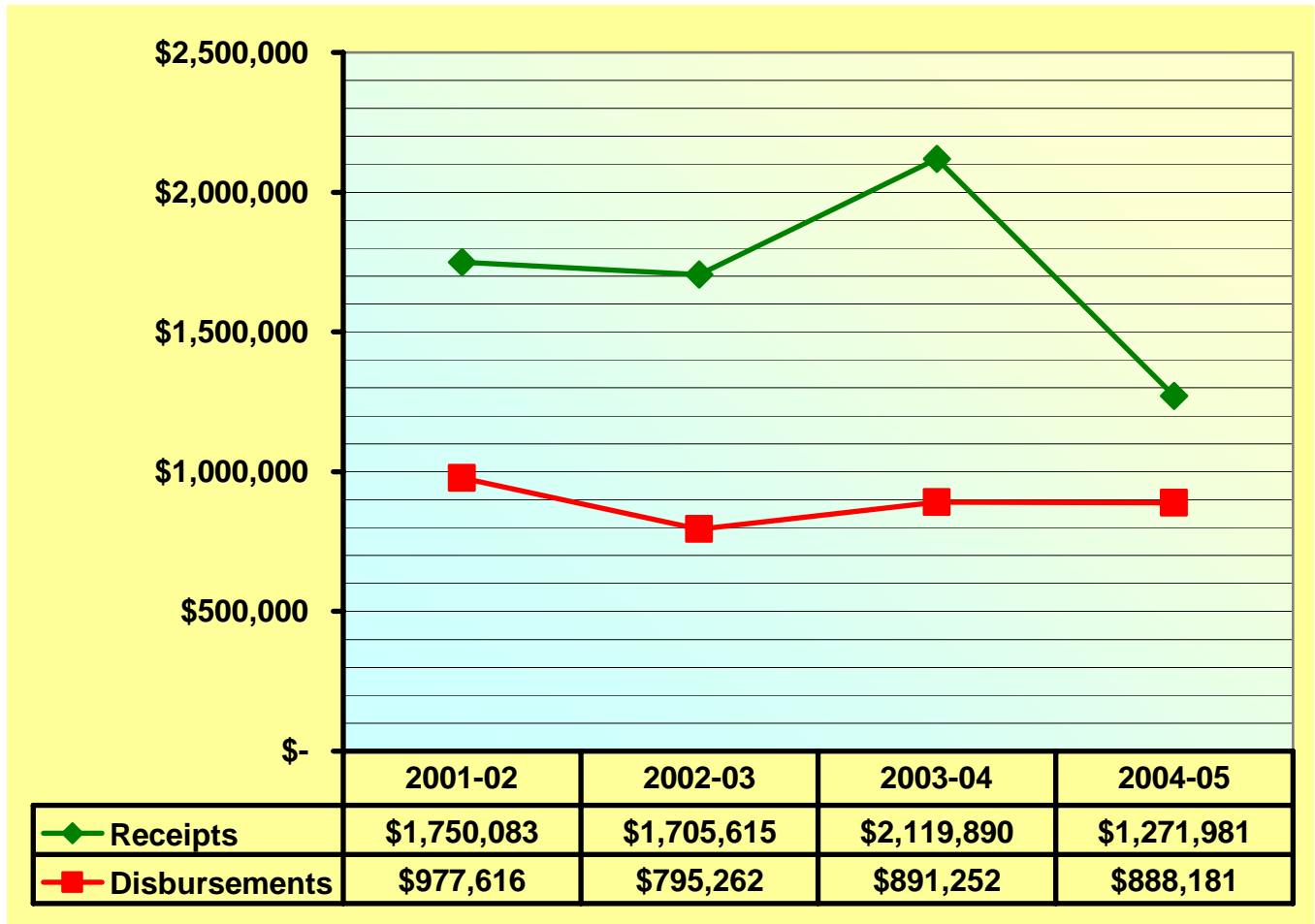
## Schedule of Operating Receipts, Disbursements, and Balances

**October 1, 2001 through September 30, 2005**

	<u>2004-05</u>	<u>2003-04</u>	<u>2002-03</u>	<u>2001-02</u>
<b><u>Receipts</u></b>				
General Contractor's Fees (152)	\$948,708.85	\$1,010,186.19	\$866,031.50	\$888,544.84
General Contractor's Additional Fees (193)	799,405.00	891,532.50	731,850.00	722,643.16
Legal Violation Fees (598)	280,000.00	214,500.00	107,250.00	136,500.00
Abandoned Property (601)	2,400.00	0.00	0.00	0.00
Prior Year Refunds (684)	817.30	0.00	0.00	1,473.19
Salvage (699)	13.52	3,456.48	3.53	14.66
Insurance Premiums (774)	71.30	215.18	680.00	907.00
Total	<u>2,031,415.97</u>	<u>2,119,890.35</u>	<u>1,705,815.03</u>	<u>1,750,082.85</u>
<b><u>Disbursements</u></b>				
Personnel Costs	445,208.60	423,236.63	370,145.29	429,048.26
Employee Benefits	168,519.66	134,888.24	111,069.51	132,294.20
Travel-In-State	7,224.24	7,054.97	6,426.43	7,483.45
Travel- Out-of-State	1,484.73	2,195.00	0.00	0.00
Repairs and Maintenance	2,542.60	18,878.59	980.00	2,987.28
Rentals and Leases	80,505.31	102,471.02	104,712.23	113,930.16
Utilities and Communications	40,772.44	38,781.55	41,734.59	38,542.74
Professional Services	52,424.50	52,408.28	106,027.86	205,013.00
Supplies, Materials & Operating Expenses	54,346.65	39,055.07	47,104.35	37,268.57
Transportation Equipment Operations	12,751.86	7,702.59	7,062.06	5,419.84
Transportation Equipment Purchases	0.00	44,427.00	0.00	0.00
Other Equipment Purchases	22,400.06	20,151.20	0.00	5,628.00
Non Expenditure Disbursements	450,234.37	164,355.55	138,855.36	92,878.54
Distributions to Institutions of Higher Education	846,956.14	695,257.50	686,375.00	673,835.00
Total	<u>2,185,371.16</u>	<u>1,750,863.19</u>	<u>1,620,492.68</u>	<u>1,744,329.04</u>
Excess (Deficiency) of Receipts Over Disbursements	(153,955.19)	369,027.16	85,322.35	5,753.81
Cash Balance at Beginning of Year	1,402,293.29	1,033,266.13	947,943.78	942,189.97
Cash Balance at End of Year	1,248,338.10	1,402,293.29	1,033,266.13	947,943.78
Reserved for Year-end Obligations	(95,416.08)	(74,913.03)	(143,652.83)	(92,713.17)
Reserved for Transfer to Institutions of Higher Education	(759,434.77)	(847,145.89)	(695,257.75)	(686,375.25)
Reserved for Transfer to General Fund	(363,487.25)	(450,234.37)	(164,355.55)	(138,855.36)
Unobligated Cash Balance	<u>\$30,000.00</u>	<u>\$30,000.00</u>	<u>\$30,000.00</u>	<u>\$30,000.00</u>

## Operating Receipts Vs Operating Disbursements (Chart)

October 1, 2001 through September 30, 2005



## **QUESTIONNAIRES**

### **Board Member Questionnaire**

**Questionnaires were mailed to all five board members. Five responded.**

#### **Question #1**

**Would the absence of the board be detrimental to the public welfare?**

Yes     5                      No

#### **Question #2**

**What changes in Alabama laws regulating contractors would you recommend?**

1. We need an increase in the amount (\$30,000) we are allowed to carry over at fiscal year end.
2. Eliminate the Sub-Contractor designation, make all general. Raise the threshold from \$50,000 to \$150,000 on contracts.
3. Retain more funds at year end for operating capital. Move more toward uniform (regional and national) testing.
4. The laws and procedures are being slowly updated with administrative rules. This process seems to be working well.
5. Not sure at this time.

#### **Question #3**

**What is the most significant issue currently facing the board?**

1. Many violations by subcontractors and general contractors.
2. Making sure that those who should have a license are aware that they are required to have one.
3. Amount of funds retained is not sufficient to operate Board if revenue stream from violations was not enough to cover expense.
4. Implementing a national standard for trades testing. Further simplifying the licensing and enforcement for subcontractors.
5. Communication of license requirements for subcontractors. Testing of license applicants

#### **Question #4**

**What is the board doing to settle this issue?**

1. We are education the various municipalities and counties on the licensing laws as they are, typically, the first point of contact.

## ***Board Member Questionnaire***

2. We are currently working on an advertising campaign to place billboards on major highways across the state.
3. Seeking legislative action
4. Joe Rogers serves on the national committee putting standardized testing in place. Our board is working with the sub issue each month.
5. The Board is developing a communication plan. The board is considering whether to develop trade testing.

### **Question #5**

**Is the board adequately funded? If not, what action should be taken to remedy the situation?**

Yes    3                      No    2

1. [We are not adequately funded] from October until April of each year. We are okay once our renewal funds build up.
2. At the end of each year the board is left with too little money to pay its obligations timely. A change in statute is required.

### **Question #6**

**What is the purpose of your fiscal year end fund balance?**

1. Operating funds.
2. No response.
3. Operating capital. Needs to be increased to a larger amount (30%) of annual revenue. Board uses income from violations early in the year to operate before licensing revenue begins to come in. It is possible not to have enough revenue to operate if violations become any lower.
4. The Board needs to increase the retained balance to finance operations. Currently the education check-off funds are filling this void.
5. Cover costs for months cash receipts are low.

Licensee Questionnaire—General Contractor

Questionnaires were mailed to one hundred licensees. Forty-six responded.

Question #1

**Is the regulation of general contracting by the board necessary to protect the public welfare?**

Yes 37                      No 5                      No Response 4

Question #2

**Do the laws, regulations, and policies regulating general contracting in Alabama constitute an unnecessary restriction on the profession?**

Yes 6                      No 35                      No Response 5

Question #3

**Are you adequately informed of changes to the rules and laws concerning the practice of general contracting in Alabama?**

Yes 31                      No 8                      No Response 7

Question #4

**Did the Licensing Board for General Contractors perform the licensing renewal process in a timely manner? If not, how long did it take to receive your license?**

Yes 42                      No 2                      No Response 2  
1 month 1                      2 months 1                      3 months or longer 0

Question #5

**Has any member of the Licensing Board for General Contractors or its staff asked for money (other than normal fees), services or other things of value in return for a license?**

Yes 1\*                      No 44                      No Response 1

\* Responses are anonymous. No further information was provided.

Question #6

**What do you think is the most significant issue currently facing the practice of general contracting in Alabama?**

1. Not checking on people that don't have a license.
2. Cost of insurance, non-licensed contractors performing work.
3. No Response
4. Make sure that all contractors that perform work are licensed.
5. No comment
6. No response
7. Protecting the public from professional bankruptcy sharks. Planned bankruptcy.
8. Qualify the person or firm for general contractor license.
9. Unlicensed, uninsured contractors taking business.
10. To ensure that qualified companies receive general contracting license.
11. No response
12. Making sure contractors are qualified to do the work and having a fair bid system.
13. Rising cost of insurance
14. No response
15. Homeowners without a license building their own home.
16. No response
17. No response
18. No comment
19. They don't enforce anything. They just collect money. Anybody can contract without fear of getting caught.
20. The board has become a plague to the profession. It is a dictatorial power instead of what it should be. We need a rule to go by but not as it is.
21. No response
22. No response
23. No response
24. No response
25. No response
26. The few sorry contractors who give all of us a bad reputation.
27. No response
28. No response
29. It is hard for small contractors to have the funds to bid on higher jobs because of the amount of taxes that must be paid.
30. High liability insurance cost.
31. No response
32. It should be enforced that permits, inspections and general contractor license be required in county areas the same as city limit areas.
33. Unlicensed contractors doing work at such low prices, no insurance.
34. Legal, qualified work force. High insurance premiums.
35. The availability of skilled labor in all trade areas.
36. No response
37. Labor supply
38. Too much paper work



39. No response
40. No response
41. No response
42. No response
43. Their professed concern is for the public with little regard for the contractor.
44. No response
45. That the general contractors need to be informed that they are responsible for subcontractors on job that are not licensed.
46. Local inspectors with too much power and too little knowledge or experience.

**Question #7**

**How has the board addressed the issue?**

1. Fairly
2. Insurance? They have been enforcing and cracking down on non-licensed contractors in my area.
3. No response
4. No response
5. No response
6. No response
7. No response
8. I'm not sure on new applicants.
9. They investigate when notified.
10. No response
11. No response
12. I'm not sure
13. Not sure
14. No response
15. To my knowledge, it hasn't
16. No response
17. No response
18. No comment
19. I'm talking about the board.
20. I think it has improved in the last two years.
21. No response
22. No response
23. No response
24. No response
25. No response
26. Investigation and revocation of offending contractor's license.
27. No response
28. No response
29. It hasn't.
30. None as far as I know.
31. No response

- 32. At this time I do not know.
- 33. No response
- 34. I do not know
- 35. This is not a board issue.
- 36. No response
- 37. No response
- 38. No response
- 39. No response
- 40. No response
- 41. No response
- 42. No response
- 43. This issue has not been addressed
- 44. No response
- 45. Fined me \$2,000 (but I learned the hard way).
- 46. ?

**Other Comments**

- 6. Not pertaining to licensing board, but there is a lot of examining needed to be done in Perry County.
- 19. What do they do with the \$200 per year? When are they going after companies that contract without a license?
- 20. Set up more convenient places for new contractors to qualify. They should all be local and simpler.
- 30. Right now I pay 19 entities and it is about to stifle my small business. Look at some: Alabama and federal corporation tax, Alabama and federal I. C. tax, social security, Medicare, Alabama privilege tax, Flomaton license tax, city-county license tax wherever the job may be, worker's compensation insurance, general liability insurance, general contractors license, Alabama sales tax, federal and state unemployment tax, personal property tax, vehicle general liability insurance, and OSHA. How much more can small businesses take?
- 32. Would it be possible to inform the public through local newspapers about the importance of hiring a licensed general contractor for work such as swimming pools, etc., with phone numbers to call for information? This work is very seasonal and builders will come in quickly and leave quickly sometimes giving this business a bad reputation for permanently (?) pool builders.
- 43. The board should work in close contact with the contractor and this would limit problems with the public.

Licensee Questionnaire—Subcontractors

Questionnaires were mailed to one hundred licensees. Fifty-two responded.

Question #1

**Is the regulation of general and sub-contracting by the board necessary to protect the public welfare?**

Yes 41                      No 7                      No Response 4

Question #2

**Do the laws, regulations, and policies regulating general and sub-contracting in Alabama constitute an unnecessary restriction on the profession?**

Yes 9                      No 27                      No Response 16

Question #3

**Are you adequately informed of changes to the rules and laws concerning the practice of general and sub-contracting in Alabama?**

Yes 24                      No 22                      No Response 6

Question #4

**Did the Licensing Board for General Contractors perform the licensing and renewal process in a timely manner? If not, how long did it take to receive your license?**

Yes 44                      No 7                      No Response 1  
1 month 0                      2 months 5                      3 months or longer 1

Question #5

**Has any member of the Licensing Board for General Contractors or its staff asked for money (other than normal fees), services or other things of value in return for a license?**

Yes 0                      No 52                      No Response 0

Question #6

**What do you think is the most significant issue currently facing the practice of general and sub-contracting in Alabama?**

1. Unlicensed contractors who do work in rural counties, such as Cleburne, that do not have the population to mandate state licensing.
2. No response
3. Best is yearly renewal instead of semi annually
4. No response.
5. No response.
6. No response.
7. Jobs over \$50,000 require a sub to have a G. C. license. There is no enforcement of jobs given to subs who do not get a license. Too many jobs are awarded to unlicensed subs over \$50,000. Please get reciprocal licensure with other states.
8. Subs should be required to file a financial statement and graded in regards to the size of job they can bid. This would be a start for controlling some of the contractors.
9. Too many insurance requirements beyond state requirements.
10. Having to use DBE for work and the DBE program needs fixing.
11. The most significant issue is insurance that a subcontractor is required to carry. The price a sub has to pay for workmen's compensation and liability is out of reach for a lot of good subs.
12. Too many fly by night subs. The need to crack down on that.
13. No response.
14. All licensees bond to do work should be combined for the same work type.
15. General contractors using subcontractors' quotes to shop prices.
16. No response.
17. Immigration.
18. Too many that don't pay taxes or have the proper insurance are "working" in the professional field.
19. No response.
20. Too many regulations.
21. Non-licensed contractors performing works in Alabama.
22. Hispanic labor.
23. No response
24. No response
25. No response
26. No response
27. All subs should be required to have proper license as well as workers compensation and general liability. Those that are legitimate cannot compete monetarily with the trunk slammers.
28. No response
29. Run by big money.
30. More information in a timely manner as the laws are changed and more educational updates in changes as they arise like building codes and safety issues.
31. No response
32. No response
33. No response

34. Negotiating jobs. Some contractors don't have licenses.
35. Unaffordable liability insurance.
36. Insurance and lawsuits
37. The cost of workman's comp insurance
38. Subcontractors take too much risk financially when a general contractor links their payment to the final customer's payment. The general contractor should be responsible regardless of when they get paid. Our suppliers don't wait for payment.
39. Health insurance. Is there such a thing as a pool avenue with this licensing board, including all necessary insurance, liability, etc? Please send all information if available.
40. No response
41. No response
42. Contractors performing work with no license.
43. There are too many now—unlicensed people doing work on Alabama. Needs to ensure laws or make new ones. This keeps profits and pay rates down.
44. No response
45. Faulty workmanship and unreliable. Not having to have a license in the trade or business license.
46. No response.
47. No response.
48. No response.
49. No response.
50. The very low "maximum size job a subcontractor can bid, (\$50,000)". This should be increased at least to \$400,000 or 20% of a last year's billings.
51. They are free to use unlicensed and uninsured subcontractors to do their framing work. For example, sheetrock, water proofing, roofing and landscaping.
52. Unlicensed and insured subs.

**Question #7**

**How has the board addressed the issue?**

1. I do not know.
2. No response.
3. Do not know.
4. No response.
5. No response.
6. No response.
7. No response.
8. No response.
9. Don't know that is has.
10. Don't know.
11. Not at all.
12. No comment.
13. No response.
14. No response.
15. No response.

*Licensee Questionnaire  
Subcontractors*

16. No response.
17. No response.
18. To my knowledge the issue has not been addressed.
19. No response.
20. By adding regulations.
21. Don't know.
22. No response
23. Not at all, so far.
24. No response
25. No response
26. Have not, we are looked over.
27. No
28. No response
29. They don't.
30. No response
31. No response
32. No response
33. No response
34. No, because they haven't put a stop to it.
35. No response
36. No response
37. Unknown
38. No
39. No response
40. No response
41. No response.
42. No response.
43. To my knowledge, not at all
44. To my knowledge, not all.
45. They do not require license. Nor do they hold them accountable for their actions.
46. No response.
47. No response.
48. No response.
49. No response.
50. We don't know, but would be interested to know if this subject has come to the board previously. If yes, what was the answer?
51. I do not know.
52. Sometimes long delay in speaking with someone concerning any questions. They handle things okay, but in an untimely manner.

**Other Comments**

1. I am an electrical subcontractor, state license #1222. My office is in Cleburne County, but due to limited work there all of my work is in Calhoun County and surrounding areas. I think the Board should mandate state licenses in all counties for subcontractors. Those of us who are licensed and insured cannot compete in most rural areas.

*Licensee Questionnaire*  
*Subcontractors*

- 26. Too many subcontractors still working without a license.
- 29. Why would a general contractor want to fill out a form for a new man to get a general contractor license?
- 38. Requiring a license of a sub contractor is simply a tax. It serves no function that we can think of. It drives up the cost of operating a business and is a waste of time and money.
- 39. You may not be the licensing board that this applies to, but in the HVAC field it starts off with continuing education mandatory- over the counter sales of refrigerant to the public. Whole sale and internet distributors selling direct to the public with no licenses and no refrigerant certification. Before long NATE may be mandatory. No telling what's next.
- 50. We need laws and regulations to make sure they are revised on some schedule. Maybe subcontractors could participate in process.

# APPENDICES

## Smart Budgeting Reports

### 2006 Smart Budget Request

State of Alabama EBO Form No. 4a		AGENCY BUDGET REQUEST STRATEGIC PLAN SUMMARY		General Contracting Board		Page 1 of 1
				Agency 324 ACTUAL FY04	BUDGET FY05	ESTIMATE FY06
AGENCY	Licensing Board for General Contractors					
PROGRAM	Professional Licensing and Regulation Program					
ACTIVITY	Licensing and Regulation of Commercial Contractors			\$2,117,660	\$1,677,700	\$1,505,000
MISSION	To insure that only properly qualified persons be permitted to engage in general contracting.					
VISION (Optional)	Insure that contractors are both qualified and responsible for the completion of all projects.					
VALUES (Optional)	An agency that values integrity, is committed to excellence, and values team work.					
GOAL(S)	To insure that only qualified contractors enter the profession.					
	To maintain essential information on all commercial contractors practicing in Alabama.					
	To resolve all complaints in a timely manner with satisfactory results.					
	To collect violation fees from those contractors who do not adhere to the Boards Regulations.					
ASSUMPTIONS	Number of applications will remain the same					
	(No. applications) 1,136 1,136 1,136					
	Collection amounts on violations will increase by 15%					
	(Dollar amount of Violations) \$214,500 \$246,675 \$283,675					
	Number of renewal applications will increase by 10%					
	(No. of renewal applications) 6,997 7,697 8,467					
CRITICAL ISSUES						
Internal	Must make the renewal process more accessible to contractors.					
External	Make contractors aware of rules and procedures.					
OBJECTIVES						
Spending	Increase administrative spending by no more than 3%					
Staffing	Reduce the staffing in enforcement and renewal division.					
Efficiency	Reduce administrative time required to process renewal applications					
Quality	Reduce the number of telephone inquiries about renewal process.					
	Reduce the area of each enforcement officer.					
STRATEGIES	1. Create a web-based process for renewal, allowing the payment of renewal fees by credit card.					
	2. Create enhanced method for reporting financial statements for renewal procedure.					
	3. To make the renewal process more efficient.					
AGENCY HEAD	JOSEPH C. ROGERS, JR., EXECUTIVE SECRETARY					



## 2006 Smart Operations Plan

State of Alabama EBO Form No. 4b		AGENCY NAME: Licensing Board for General Contractors FY 2006 SMART OPERATIONS PLAN		Agency No. 324 Page 1 of 1	
		ACTUAL FY04	BUDGET FY05	BUDGET FY06	
<b>MISSION</b>	To safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting.				
<b>VISION (Optional)</b>	To be an agency that protects the public against incompetent contractors and to better assure properly built structures which are free from defects and dangers to the public.				
<b>VALUES (Optional)</b>	Integrity, accomplishing goals in a timely manner, and effective communication.				
<b>CRITICAL ISSUES (Optional)</b>					
Internal	Additional staffing to meet our goals.				
External	Carry over funding is not adequate to operate normal functions of the Board.				
<b>PROGRAM ACTIVITY</b>	Licensing Board for General Contractors (\$ in millions)	2,118	1,708	1,535	
<b>MISSION</b>	To insure that only properly qualified person be permitted to engage in general contracting.				
<b>GOAL(S)</b>	To insure that only qualified contractors enter the profession. To maintain essential information on all commercial contractors practicing in Alabama. To resolve all complaints in a timely manner with satisfactory results. To collect violation fees from those contractors who do not adhere to Board regulations.				
<b>WORKLOAD</b>	Number of applications will remain the same (No. applications)	904	904	904	
	Collection amounts of violations will remain the same (Dollar amount of Violations)	110,000	110,000	110,000	
	Number of renewal applications will remain the same (No. of renewal applications)	6,848	6,848	6,848	
<b>CRITICAL ISSUES</b>					
Internal	Must make the renewal process more accessible to contractors.				
External	Must make contractors aware of rules and procedures.				
<b>OBJECTIVES</b>					
Spending	Increase administrative spending by no more than 3% (\$ in millions)	1,705	1,707	1,535	
Staffing	Reduce the staffing in enforcement and renewal division (FTE)	20	28	22	
Efficiency	Reduce the administrative time required to process renewal applications (applications/hrs.)	1.5%	1.3%	1.0%	
Quality	Reduce the number of telephone inquiries about the renewal process (calls received per day)	150	50	25	
	Reduce the area of each enforcement officer (State wide coverage)	1/2 State	1/3 State	1/3 State	
<b>STRATEGIES</b>	Create a web-based process for renewal, allowing the payment of renewal fees by credit card. Create enhanced method for reporting financial statements for the renewal procedure. To make the renewal process more efficient.				

## 2006 Smart Quarterly Performance Report

Smart Quarterly Performance Report													
Fiscal Year: 2006													
Agency: 324 Contractors, State Licensing Board for General													
Org:													
Program: 653 PRO AND OCCU LICENSING AND REG													
Activity: 0472 LIC & REG OF GEN CONTRACTORS													
Performance Measures													
Workload/Cost Factor	Performance Indicator	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual			
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: Number of Applications will remain the same.	No. of applications	134	340	220	312	250	0	300	0	904	0		
WC2: Collection amounts on violations will remain the same.	\$	30,000	182,000	35,000	126,000	25,000	0	20,000	0	110,000	0		
WC3: Number of renewal applications will remain the same.	No. of applications	2,033	1,893	1,270	864	2,100	0	1,445	0	6,848	0		
Spending	Performance Indicator	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual			
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: Increase administrative spending by no more than 3%	\$	381,171	250,933	340,578	241,112	436,269	0	376,981	0	1,535,000	0		
Staffing	Performance Indicator	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual			
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: Reduce the staffing in enforcement and renewal division	FTE	18	16	18	17	0	0	18	0	18	0		
Efficiency	Performance Indicator	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual			
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Reduce the administrative time required to process renewal applications.	(Applications divided by hrs)	0	0	0	0	0	0	0	0	0.01	0		
Quality	Performance Indicator	First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual			
		Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Reduce the number of telephone inquiries about the renewal process	(calls received per day)	25	22	25	33	25	0	25	0	25	0		
QU2: Reduce the area of each enforcement officer	(State wide coverage)	1/3 State	1/3 State	1/3 State	1/3 State	0	0	0	0	0	0		

Statutory Authority

**CHAPTER 8. CONTRACTORS.**

**REFERENCES**

**CROSS REFERENCES**

As to provisions which require timely payments to contractors and subcontractors, see Chapter 29 of Title 8.

**ADMINISTRATIVE CODE**

2 Ala. Admin. Code 170-X-5-.01 et seq., Building Commission; Bidding and Awarding Contracts for Projects Supervised and Administered by the Commission.

4 Ala. Admin. Code 230-X-1-.01 et seq., Licensing Board for General Contractors.

**ARTICLE 1. GENERAL PROVISIONS.**

**ANNOTATIONS**

**CASENOTES**

Generally 1 ..... enter p

Enforcement of contract for services 3 ..... enter p

Purpose 2 ..... enter p

**1. Generally**

This chapter, regulating the licensing of general contractors, is a police measure, expressing public policy and not merely for revenue purposes. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

The regulatory provisions which provide for licensing general contractors and their employment are broad and comprehensive. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

**2. Purpose**

It was the intention of the legislature that this chapter be enacted for regulation and protection as distinguished from a law created solely for revenue purposes. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (1969); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

Primary purpose of chapter is to protect the public against incompetent contractors for certain type structures and also to better assure properly constructed structures which are free from defects and dangers to the public. *Cooper v. Johnston*, 283 Ala. 565, 219 So.2d 392 (1969); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

This chapter is not a law enacted solely for revenue purposes, but rather is regulatory

legislation designed to protect the public against incompetent contractors and to assure properly built structures which are free from defects and dangers to the public. Architectural Graphics and Const. Services, Inc. v. Pitman, 417 So.2d 574 (Ala.1982).


Regulatory provisions which provide for licensing general contractors and their employment show a legislative intent to restrict to certain qualified persons, firms or corporations the erection of structures which cost \$20,000.00 or more. Cooper v. Johnston, 283 Ala. 565, 219 So.2d 392 (Ala.1969).

### 3. Enforcement of contract for services

Express or implied contracts entered into by an unlicensed general contractor are null and void because they violate public policy. Moreover, such contracts are illegal and unenforceable by the unlicensed general contractor. Goodwin v. Morris, 428 So.2d 78 (Ala.Civ.App.1983). Licenses 39.43(1)

A contract by an unlicensed "general contractor," as defined in § 34-8-1, is null and void as a violation of public policy. Such contracts are illegal and unenforceable by the unlicensed general contractor. Architectural Graphics and Const. Services, Inc. v. Pitman, 417 So.2d 574 (Ala.1982).

Although this article provides a misdemeanor penalty for noncompliance, express or implied contracts under this article with nonlicensed general contractors are null and void as a violation of public policy. Such contracts are illegal and unenforceable by the unlicensed general contractor. Hawkins v. League, 398 So.2d 232 (Ala.1981).

If the purpose of a licensing statute is the regulation of the business licensed and not merely the collection of revenue, a person not licensed cannot enforce a contract for services rendered within the scope of the regulated business. Tucker v. Walker, 293 Ala. 589, 308 So.2d 245 (Ala.1975). Licenses  38.7

In order for contracting party to be entitled to summary judgment, it must be shown that: (1) general contractor was unlicensed, (2) the contracted work was of the type covered by the statute and (3) the "cost" of the work was \$20,000.00 or more. Tucker v. Walker, 293 Ala. 589, 308 So.2d 245 (Ala.1975).

**Cited** in Southern Metal Treating Co. v. Goodner, 271 Ala. 510, 125 So.2d 268 (1960); Hathcock v. Mitchell, 277 Ala. 586, 173 So.2d 576 (1965); Tucker v. Trussville Convalescent Home, Inc., 289 Ala. 366, 267 So.2d 438 (1972); West Alabama Remodeling, Inc. v. Ireland, 412 So.2d 766 (Ala.1982); Hutcheson v. United States, 540 F.Supp. 880, 82-1 U.S. Tax Cas. (CCH) ¶ 9304, 49 A.F.T.R.2d (P-H) ¶ 82-1151 (M.D.Ala.1982); Herbert v. Birmingham-Jefferson Civic Center Authority, 694 F.2d 240 (11th Cir. Ala.1982).

#### § 34-8-1. "General contractor" defined; "Subcontractor" defined. [Historical Notes](#) [References](#) [Annotations](#)

(a) For the purpose of this chapter, a "general contractor" is defined to be one who, for a fixed price, commission, fee, or wage undertakes to construct or superintend or engage in the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure, site work, grading, paving or project or any improvement in the State of Alabama where the cost of the undertaking is fifty thousand dollars (\$50,000) or more, shall be deemed and held to have

engaged in the business of general contracting in the State of Alabama.

(b) For the purpose of this chapter, a "general contractor" is defined to include one who, for a fixed price, commission, fee, or wage exceeding five thousand dollars (\$5,000), undertakes to construct, superintend the construction of, repair, or renovate, any swimming pool, and anyone who shall engage in the construction, superintending of the construction, repair, or renovation of any swimming pool in the State of Alabama, where the cost of the undertaking exceeds five thousand dollars (\$5,000), shall be deemed and held to have engaged in the business of general contracting in the State of Alabama and shall be subject to this chapter.

(c) For the purpose of this chapter a "subcontractor" is defined to be one who performs work under contract to a general contractor as defined in subsection (a). (Acts 1935, No. 297, p. 721, § 1; Code 1940, T. 46, § 65; Acts 1959, No. 571, p. 1429, § 1; Acts 1989, No. 89-648, p. 1278, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1; Act 2003-142, p. 441, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1996 amendment**, effective May 17, 1996, in subsection (a), inserted "or engage in", inserted ", alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition", inserted "structure, site, work,", inserted ", paving or project", deleted "or structure" following "any improvement", inserted "in the State of Alabama" preceding "where the cost", and deleted "and anyone who shall engage in the construction or superintending the construction of any structure or any undertaking or improvements above mentioned in the State of Alabama, costing \$20,000.00 or more," preceding "shall be deemed"; and made nonsubstantive changes.

**The 1997 amendment**, effective January 1, 1998, in subsection (a) substituted "fifty thousand dollars (\$50,000)" for "twenty thousand dollars (\$20,000)"; added subsection (c); and made nonsubstantive changes.

**The 2003 amendment**, effective June 13, 2003, in subsection (c) substituted "one" for "a 'general contractor' as defined in subsection (a),", substituted "a general" for "another general", and inserted "as defined in subsection (a)".

## REFERENCES

### RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Law of Damages § 17:18, Contractors.

Alabama Personal Injury and Torts § 1:6, Duty -- Imposed by Statute -- Negligence Per Se.

Alabama Personal Injury and Torts § 8:44, Contractors.

Bruner and O'Connor on Construction Law § 16:11, Licensing the Construction Professional.

## ANNOTATIONS

## CASENOTES

Generally 1 ..... enter p  
"Contractor" 4 ..... enter p  
"Cost" 5 ..... enter p  
Effect of lack of license 3 ..... enter p  
"Improvement or structure" 6 ..... enter p  
Relationship to other laws 2 ..... enter p

### 1. Generally

In order to demonstrate entitlement to a judgment as a matter of law on a nonlicensure defense, a party must prove with respect to an alleged general contractor: (1) that the alleged contractor was unlicensed; (2) that the contracted work was of the type covered by the licensure statute; and (3) that the cost of the work was, under that version of statute, \$20,000 or more. *Central Alabama Home Health Services, Inc. v. Eubank*, 790 So.2d 258 (Ala.Civ.App.2000), rehearing denied. Licenses ☒ 39.43(2)

Requirements of licensing provisions of this section are penal in nature and express a firm public policy of this state to guard our citizens against incompetent contractors for certain type structures, and also to better assure properly constructed structures which are free from defects and dangers to the public. *Brown v. Mountain Lakes Resort, Inc.*, 521 So.2d 24 (Ala.1988).

### 2. Relationship to other laws

Considering the fact that the requirements of the this section are penal in nature, reflecting a strong public policy as recognized by the legislature in favor of the public at large, the court found that the illegality was placed in issue by the defendant's general denial which itself put into question the validity of the contract. Surely such contracts can find no sanction, and thus be enforceable, simply because of a failure to plead them specially, when their validity is attacked by a plea of general denial. To hold otherwise would subvert a strong public policy intended to protect our citizens by a procedural rule. We cannot interpret A.R.C.P., Rule 8(c) in such a manner as to create an injustice to one of the public for whom the protection of the statute was created. *Brown v. Mountain Lakes Resort, Inc.*, 521 So.2d 24 (Ala.1988).

### 3. Effect of lack of license

If any person performs work as a general contractor and fails to obtain a general contractor's license, the contract must be declared null, void, and unenforceable. *Herbert v. Birmingham-Jefferson Civic Center Authority*, 1982, 694 F.2d 240.

To be entitled to a summary judgment on a defense that an alleged general contractor was not licensed, a party must prove that (1) the alleged contractor was unlicensed; (2) the contracted work was of the type covered by the licensure statute; and (3) the cost of the work was \$50,000 or more. *Triple D Trucking, Inc. v. American Petroleum Equipment and Const., Inc.*, 865 So.2d 1234 (Ala.Civ.App.2003). Licenses ☒ 39.43(1)

General contractor's claims against property owner sounded in contract, not in fraud, and, thus, were barred by contractor's lack of license; contractor did not seek to raise fraud and deceit claims until after property owner discovered that contractor was

unlicensed. *White v. Miller*, 718 So.2d 88 (Ala.Civ.App.1998). Licenses ☒ 39.43(1)

Absence of license at contract formation not bar to later recovery on contract where license's issuance was delayed due to third-party error and contractor continued to perform work for developer, whose president continued to acknowledge, both before and after license was issued, that contractor was entitled to receive payment for this work. *McNairy v. Sugar Creek Resort, Inc.*, 576 So.2d 185 (Ala.1991).

Unlicensed contractors cannot avoid protection of chapter by circumventing requirements. The importance of the regulatory nature of this chapter, and the protection it affords the citizens of Alabama, cannot be avoided by unlicensed contractors who, through creative schemes, seek to circumvent the requirements of this chapter; an unlicensed contractor will not be afforded the privileges that come from the statute because of its association with a licensed contractor, because of its obtaining a license subsequent to the execution of the contract, or because of the equally inequitable conduct of the other contracting party. *J & M Industries, Inc. v. Huguley Oil Co., Inc.*, 546 So.2d 367 (Ala.1989).

The rule denying legal status to contracts by unlicensed general contractors has been applied to deny recovery where the action was based on the contract itself, for work, labor, and materials furnished and in an action to establish a mechanic's lien. *Architectural Graphics and Const. Services, Inc. v. Pitman*, 417 So.2d 574 (Ala.1982).

Where the definition of general contractor under this section is met, expressed or implied contracts with nonlicensed "general contractors" are null and void as a violation of public policy. *Twickenham Station, Inc. v. Beddingfield*, 404 So.2d 43 (Ala.1981).

#### **4. "Contractor"**

In determining whether a person has engaged in the type of work covered by the definition of "general contractor" provided by Alabama's statutory licensing scheme, Alabama courts look at many factors, such as the intent of the parties, the amount of control by the person, and the type of work performed by the person. *Allstate Ins. Co. v. Hugh Cole Builder, Inc.*, 127 F.Supp.2d 1235 (M.D.Ala.2001). Licenses ☒ 11(5)

Trucking company that was hired to haul dirt for construction of supermarket was not a "general contractor," did not need a license as a general contractor, and, therefore, could recover payment from site work subcontractor for work and labor; the company was engaged only in the hauling and dumping of dirt for the project, not site work or grading. *Triple D Trucking, Inc. v. American Petroleum Equipment and Const., Inc.*, 865 So.2d 1234 (Ala.Civ.App.2003). Licenses ☒ 11(5)

Cost of builder's undertaking was \$20,000, rather than \$19,610, and thus builder was required to be a licensed general contractor to obtain building permit, even though contract stated that a fee of \$390 for drawing services would be deducted from the \$20,000 cost and paid to architect; builder engaged architect's services and negotiated his fee, builder exercised control over design phase of contract, and builder referred to his agreement as a "design/build" contract. *Thomas Learning Center, Inc. v. McGuirk*, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Licenses ☒ 11(5)

A plumber, who as subcontractor agreed to furnish all fixtures and connections thereto for building project, was held not exempt from payment of privilege tax as a "contractor" merely because he held a plumber's license or because building contractor had paid contractor's license, since this chapter requires a license for each business

conducted. *Pate v. State*, 243 Ala. 44, 8 So.2d 516 (Ala.1942). Taxation  3668

## 5. "Cost"

"Cost" in the definition refers to the amount which the contractor is to receive for his work and not merely the out-of-pocket expenses incurred by the contractor in performing the work. *Tucker v. Walker*, 293 Ala. 589, 308 So.2d 245 (1975); *Hawkins v. League*, 398 So.2d 232 (Ala.1981).

Replacement of worn carpeting cannot be characterized as the construction of an "improvement," the only term in this section under which such work could conceivably fit; thus, the work is not the type of work performed by a general contractor as defined in this section. Therefore, a successful bidder for carpet replacement is not required under § 41-16-50 et seq., to be a licensed general contractor. *McCord Contract Floors, Inc. v. City of Dothan*, 492 So.2d 996 (Ala.1986).

Word "cost" in this section refers to the aggregate amount which the contractor is to receive for his work. *Cochran v. Ozark Country Club, Inc.*, 339 So.2d 1023 (Ala.1976).

Section cannot be circumvented by dividing the work of a single construction project into two separate contracts of less than \$20,000.00 each. *Cochran v. Ozark Country Club, Inc.*, 339 So.2d 1023 (Ala.1976).

## 6. "Improvement or structure"

One drilling a gas well is not constructing an "improvement or structure," therefore, such contractors do not fall within the "general contractor" definition of this section. *Louisiana Well Service, Inc. v. MetFuel, Inc.*, 614 So.2d 1039 (Ala.1993).

**Cited** in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979); *Gorman v. Lowery*, 419 So.2d 255 (Ala.Civ.App.1982); *Utah Foam Products, Inc. v. Polytec, Inc.*, 584 So.2d 1345 (Ala.1991), reh'g denied, without op. (Ala.); *Med Plus Properties v. Colcock Constr. Group*, 628 So.2d 370 (Ala.1993).

### § 34-8-2. Licensure and classification of contractors. [Historical Notes](#) [References](#) [Annotations](#)

(a) Any person desiring to be licensed or desiring a renewal of an existing license as a general contractor in this state shall make and file with the board, not less than 30 days prior to any regular meeting thereof, a written application on a form as prescribed for examination by the board and the application shall be accompanied by three hundred dollars (\$300) for a new application or two hundred dollars (\$200) in case of a renewal. If a licensee fails to renew his or her license within 90 days following expiration of the previous license, a late penalty of fifty dollars (\$50) shall be collected, upon renewal, in addition to the renewal fee. The applicant shall apply for a license covering the type or types of contracts on which he or she wishes to perform, and the board shall classify contractors according to the type or types of contracts on which they may perform, within maximum bid limits, on the following basis: The applicant's request, his or her last annual financial statement prepared by a certified public accountant (C.P.A.) or by any independent licensed public accountant approved by the Licensing Board for General Contractors, his or her previous experience, equipment, and the facts in each case. An



applicant shall not be so classified as to permit him or her to bid on or to perform a type of work not included in his or her request for a license. If the application is satisfactory to the board, then the applicant may be required to take an examination to determine his or her qualifications. If the result of the examination of the applicant is satisfactory to the board, the board shall then issue to the applicant a certificate to engage in general contracting in the State of Alabama, stipulating in each license issued the type or types of work the contractor is permitted to bid on or to perform under his or her license and also setting out a letter symbol indicating the maximum limits on which he or she is permitted to bid or to perform in a single contract. The maximum bid limits shall be set by the formula of not more than 10 times either the net worth or working capital, whichever is the lesser amount, as shown by the applicant's latest financial statement and designated in the classification set out herein that is the closest to this amount. Should the financial statement of the applicant fail to substantiate the limits requested, further consideration may be given to (1) the present market value in lieu of book value of listed assets when properly supported with substantiating evidence, and (2) a combined statement of the applicant that includes other wholly owned or substantially owned interests. When an applicant's statement qualifies for an amount in excess of classification "E", the limits shall then be set as classification Unlimited or "U". The following letter symbols indicate the maximum amount bid limits allowed a licensee on any one single contract undertaking:

A	--	Not to exceed	\$ 100,000.00
B	--	Not to exceed	250,000.00
C	--	Not to exceed	500,000.00
D	--	Not to exceed	1,000,000.00
E	--	Not to exceed	3,000,000.00
U	--	Unlimited	

(b) Any person failing to pass the examination may be reexamined at any regular or called meeting of the board. The certificate of authority to engage in the business of general contracting in the State of Alabama shall expire 12 months following its issuance or renewal and shall become invalid on that date unless renewed. The board may provide for a transitional period following May 19, 1999, during which licenses may be renewed for less than 12 months, or more than 12 months, in order to implement a staggered license renewal schedule in which licenses would be renewed each month throughout the year. Once the transitional period is completed, each license shall be renewed for a 12-month period. The board may promulgate rules and regulations relating to the procedures for renewal of licenses. Upon the renewal of a license, the board shall reclassify or confirm the license both as to the types of work and bid limits as specified in this section. A licensee may apply for and, on proof satisfactory to the board, may receive an increase in the amount of his or her bid limit or a change in his or her classification. Application for renewal of a license, together with the payment of a fee of two hundred dollars (\$200), received by the board at least 30 days prior to expiration, shall serve to extend the current license until the board either renews the license or denies the application. At the discretion of the board, a limited license may be issued for a particular project.

The sum or fee of three hundred dollars (\$300) accompanying original applications and sum or fee of two hundred dollars (\$200) accompanying applications for renewals under this section are for the administration and enforcement of this chapter and shall not be refunded to the applicant.

(Acts 1935, No. 297, § 9; Code 1940, T. 46, § 73; Acts 1959, No. 571, p. 1429;

Acts 1961, Ex. Sess., No. 150, p. 2093, § 1; Acts 1975, No. 485, p. 1115, § 1; Acts 1982, No. 82-400, p. 603, § 4; Acts 1986, No. 86-557, p. 1133, § 3; Acts 1991, No. 91-197, p. 361, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1991 amendment**, effective July 3, 1991, added the second sentence of subsection (a).

**The 1996 amendment**, effective May 17, 1996, substituted "his or her" for "his", "him or her" for "him", and "he or she" for "he" throughout the section; in subsection (a), in the first sentence deleted "or special" following "regular", substituted "a form as prescribed" for "such form as may then be by the board prescribed", substituted "and the" for ", which" following "examination by the board", substituted "three hundred dollars (\$300)" for "\$200.00", and substituted "two hundred dollars (\$200)" for "\$100.00", and in the seventh sentence inserted "either" preceding "the net worth" and inserted "or working capital, whichever is the lesser amount,"; in subsection (b), in the first paragraph, in the fifth sentence substituted "two hundred dollars (\$200)" for "\$100.00", and in the second paragraph, substituted "three hundred dollars (\$300)" for "\$200.00" and substituted "two hundred dollars (\$200)" for "\$100.00"; and made nonsubstantive changes.

**The 1999 amendment**, effective May 19, 1999, in subsection (b), in the second sentence substituted "12 months" for "on December 31", and inserted the third and fourth sentences.

## REFERENCES

### CROSS REFERENCES

As to revenue licenses for construction companies or contractors, see § 40-12-84.

### ADMINISTRATIVE CODE


4 Ala. Admin. Code 230-X-1-.19, Licensing Board for General Contractors; Filing of Financial Statements by Prime Contractors.

4 Ala. Admin. Code 230-X-1-.34, Licensing Board for General Contractors; Licensee and Examination.

4 Ala. Admin. Code 230-X-1-.40, Licensing Board for General Contractors; Reciprocity for License.

### LIBRARY REFERENCES

#### **American Digest System:**

Licenses  11(5), 20.

#### **Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects §§ 4, 7; Licenses §§ 34, 39-41.

### RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Law of Damages § 17:18, Contractors.

## ANNOTATIONS

### CASENOTES

Effect of delay in issuing license 1 ..... enter p

"Improvement" 2 ..... enter p

#### 1. Effect of delay in issuing license

Absence of license at contract formation not bar to later recovery on contract where license's issuance was delayed due to third-party error and contractor continued to perform work for developer, whose president continued to acknowledge, both before and after the license was issued, that contractor was entitled to receive payment for this work. *McNairy v. Sugar Creek Resort, Inc.*, 576 So.2d 185 (Ala.1991).

#### 2. "Improvement"

Replacement of worn carpeting cannot be characterized as the construction of an "improvement," the only term in § 34-8-1 under which such work could conceivably fit; thus, the work is not the type of work performed by a general contractor as defined in § 34-8-1. Therefore, the successful bidder for carpet replacement is not required under § 41-16-50 et seq., to be a licensed general contractor. *McCord Contract Floors, Inc. v. City of Dothan*, 492 So.2d 996 (Ala.1986).

**Cited** in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979); *Gorman v. Lowery*, 419 So.2d 255 (Ala.Civ.App.1982).

#### § 34-8-3. Method of examination. [References](#) [Annotations](#)

When the board conducts an examination of an applicant for a license, as much as three days may be devoted to written or oral examination, within the discretion of the board, to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of general contracting; and the board shall investigate thoroughly the financial responsibility and past record of all applicants, which will include an effort towards ascertaining the qualifications of an applicant in reading plans and specifications, estimating costs, construction ethics and other similar matters. The board shall take all applicants under consideration after having examined them and go thoroughly into the records, oral and written examinations prior to granting any certificate of license. If an applicant is an individual, examination may be taken by his personal appearance for examination, or by the appearance for examination of one or more of his responsible managing employees, and if a copartnership or corporation, or any other combination or organization, by the examination of one or more of the responsible managing officers or members of the executive staff of the applicant's firm according to its own designation.

(Acts 1935, No. 297, p. 721, § 9 1/2 ; Code 1940, T. 46, § 74; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### ADMINISTRATIVE CODE

4 Ala. Admin. Code 230-X-1-.34, Licensing Board for General Contractors; Licensee and Examination.

### LIBRARY REFERENCES

**American Digest System:**

Licenses  20.

**Corpus Juris Secundum:**

C.J.S. Architects §§ 4, 7; Licenses §§ 39-41.

### ANNOTATIONS

#### CASENOTES

**Cited** in Cooper v. Johnston, 283 Ala. 565, 219 So.2d 392 (1969); Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

#### **§ 34-8-4. Fines; revocation of licenses.** [Historical Notes](#) [References](#) [Annotations](#)

(a) The board may levy and collect an administrative fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for any violation of any provision of this chapter or the rules and regulations of the board.

(b) The board may also revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license or gross negligence, incompetence or misconduct in the conduct of business. Any person may prefer charges of the fraud, deceit, negligence, or misconduct against any general contractor licensed hereunder. The charges shall be in writing and sworn to by the complainant and submitted to the board. The charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board within 90 days after the date on which they were preferred. The hearing shall be held at the office of the State Licensing Board for General Contractors in Montgomery, Alabama. A copy of the charges, together with the notice of the time and place of hearing, shall be legally served on the accused by the secretary of the board, any sheriff in the state or by registered or certified mail, at least 10 days before the fixed date for the hearing. In the event that the service cannot be effected 10 days before the hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of the aforementioned condition. At the hearing the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him, her, or them and to produce evidence of witnesses in his, her, or their defense. If, after the hearing, the board votes in favor of finding the accused guilty, the board shall revoke the license of the accused. The board may reissue a license to any person, firm, or corporation whose license has been revoked. The board shall immediately notify the Secretary of State and the clerk of each incorporated city, town, or county in the state of its findings in the case of the revocation or of the reissuance of a revoked license. A certificate of license to replace any certificate lost, destroyed, or mutilated may be issued subject to the rules and regulations of the board.

(Acts 1935, No. 297, p. 721, § 10; Code 1940, T. 46, § 75; Acts 1959, No. 571, p. 1429, § 1; Acts 1982, No. 82-400, p. 603, § 4; Acts 1991, No. 91-197, p. 361, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1991 amendment**, effective July 3, 1991, added subsection (a), added the subsection (b) designation, and inserted "additional" near the beginning of the first sentence of subsection (b).


**The 1996 amendment**, effective May 17, 1996, substituted "the" for "such" and for "said" and "The" for "Such" throughout the section; in subsection (a), substituted "may" for "shall have the disciplinary power to", substituted "five hundred dollars (\$500)" for "\$100.00" and substituted "five thousand dollars (\$5,000)" for "\$500.00"; in subsection (b), in the first sentence substituted "may also" for "shall have the additional power to", substituted ". In the event" for "; and, in the event" so as to create the seventh sentence, and in such sentence substituted "the aforementioned" for "this"; and made nonsubstantive changes.

**The 1999 amendment**, effective May 19, 1999, in subsection (a) substituted "violation of" for "licensee who violates".

### REFERENCES

#### LIBRARY REFERENCES

##### American Digest System:

Licenses  38, 41.

##### Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 10; Licenses §§ 48, 50-63, 78-81.

### ANNOTATIONS

#### CASENOTES

**Cited** in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

#### § 34-8-5. Effect of issuance of certificate of license. [References](#) [Annotations](#)

The issuance of a certificate by the board shall be evidence that the person, firm or corporation named therein is entitled to all the rights and privileges of a licensed general contractor to perform work of the types and amounts specified in the license issued to him or it while the said license remains unrevoked or unexpired.

(Acts 1935, No. 297, p. 721, § 11; Code 1940, T. 46, § 76; Acts 1959, No. 571, p. 1429, § 1.)

### REFERENCES

#### LIBRARY REFERENCES

##### American Digest System:

Licenses  36.

##### Corpus Juris Secundum:

## ANNOTATIONS

### CASENOTES

**Cited** in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979).

#### **§ 34-8-6. Prohibited acts; penalties; cease and desist orders.** [Historical Notes](#) [References](#) [Annotations](#)

(a) Any person, firm, or corporation not being duly authorized who shall engage in the business of general contracting in this state, except as provided for in this chapter, and any person, firm, or corporation presenting or attempting to file as its own the license certificate of another, or who shall give false or forged evidence of any kind to the board, or to any member thereof, in obtaining a certificate of license, or who falsely shall impersonate another, or who shall use an expired or revoked certificate of license shall be deemed guilty of a Class A misdemeanor and for each offense for which he or she is convicted shall be punished as provided by law. Furthermore, any person including an owner, architect, or engineer who receives or considers a bid from anyone not properly licensed under this chapter shall be deemed guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(b) Every person, firm, or corporation licensed pursuant to this chapter shall include his or her license number in all construction contracts, subcontracts, bids, and proposals. Any person, firm, or corporation violating this provision shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished as provided by law.

(c) In addition to or in lieu of the criminal penalties and administrative sanctions provided in this chapter, the board may issue an order to any person, firm, or corporation engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the person, firm, or corporation to forthwith cease and desist from the activity, conduct, practice, or the performance of any work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the official seal of the board. If the person, firm, or corporation to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the person, firm, or corporation from engaging in any activity, conduct, practice, or performance of work as prohibited by this chapter. Upon showing by the board that the person, firm, or corporation has engaged or is engaged in any activity, conduct, practice, or performance of work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the person, firm, or corporation from engaging in such unlawful activity, conduct, practice, or performance of work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing, commanding the cessation of the unlawful activity, conduct, practice, or performance of work complained of, all without the necessity of the board having to give bond. A

temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to this subsection shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a fine of up to five thousand dollars (\$5,000) plus costs and attorney fees for each offense. A judgment for penalty, attorney fees, and costs may be rendered in the same judgment in which the injunction is made absolute. The trial of the proceeding by injunction shall be summary and by the trial judge without jury. Anyone violating this chapter who fails to cease work, after a hearing and notification from the board, shall not be eligible to apply for a contractor's license for a period not to exceed one year from the date of official notification to cease work. It shall be within the power of the board to withhold approval, for up to six months, of any application from anyone who prior to the application has been found in violation of this chapter.

(d) The submission of the contractor's current license number before considering the bid shall be sufficient evidence to relieve the owner, architect, engineer, or awarding authority of any liability under this chapter.

(Acts 1935, No. 297, p. 721, § 12; Code 1940, T. 46, § 77; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**


**The 1996 amendment**, effective May 17, 1996, designated the first and second paragraphs as subsections (a) and (d), respectively, and deleted the third paragraph, which related to letting and awarding of highway contracts under \$20,000.00; in subsection (a), as so designated, in the first sentence deleted ", and any person including an owner, architect or engineer who receives or considers a bid from anyone not properly licensed under this chapter," preceding "shall be deemed", inserted "Class A" preceding "misdemeanor", and substituted "and for each offense for which he or she is convicted shall be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12" for "and shall for each such offense of which he is convicted be punished by a fine of not less than \$500.00 or imprisonment of six months, or both fine and imprisonment, in the discretion of the court", and added the last sentence; added subsections (b) and (c); and made nonsubstantive changes.

**The 1999 amendment**, effective May 19, 1999, substituted "punished as provided by law" for "punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12" in three places.

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Licenses 40.

#### **Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects §§ 3, 5, 7, 12-15; Licenses §§ 82-83; Trading Stamps and Coupons § 6.

#### RESEARCH REFERENCES

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

#### 1. Generally

Builder violated general-contractor licensing statutes by obtaining a building permit for another builder, who engaged in construction project for which cost of undertaking was \$20,000 without having general contractor's license. Thomas Learning Center, Inc. v. McGuirk, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Licenses ☒ 40

#### **§ 34-8-7. Exemptions from chapter; subcontractor requirements.** [Historical Notes](#) [References](#)

(a) The following shall be exempted from this chapter:

(1) The practice of general contracting, as defined in Section 34-8-1, by an authorized representative or representatives of the United States Government, State of Alabama, incorporated town, city, or county in this state, which is under the supervision of a licensed architect or engineer and any work contracted out by the representative shall comply with the provisions of this chapter for "general contractor."

(2) The construction of any residence or private dwelling.

(3) A person, firm, or corporation constructing a building or other improvements on his, her, or its own property provided that any of the work contracted out complies with the definition in this chapter for "general contractor."

(4) The installation, repair, maintenance, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications in an emergency by a utility regulated by the Public Service Commission, or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications, or any of their respective general contractors or subcontractors, provided the work is performed under the supervision of a licensed architect or engineer. For purposes of this subdivision, the term "emergency" is defined as a situation whereby service to the consumer has been interrupted or may be interrupted if work to remedy the emergency is not performed and completed within 60 days, and such other situations that are determined to be an emergency in the discretion of the board.

(5) The repair, maintenance, replacement, reinstallation, or removal of facilities, equipment, or systems used in or substantially related to the generation, transmission, or distribution of electric power, natural gas, or telecommunications on a routine, regular, or recurring basis by a utility regulated by the Public Service Commission or any entity engaged in the generation, transmission, or distribution of electric power, natural gas, or telecommunications or any of their respective general contractors or



subcontractors, provided the work is performed under the supervision of a licensed architect or engineer.

(6) Routine or regular maintenance, repair, replacement, reinstallation, or removal of equipment, specialized technological processes, or equipment facility systems as determined by the board with regard to scope, frequency, and speciality of the work to be performed.

(b) The aforementioned exemptions shall exclude a swimming pool contractor. Provided, however, a person, firm, or corporation constructing a swimming pool on his, her, or its own property shall be exempted from this chapter.

(c) A subcontractor, as defined in subsection (c) of Section 34-8-1, is subject to and shall comply with all the provisions of this chapter as specified for general contractor except as follows:

(1) A subcontractor shall pay one-half the fees as required in this chapter for general contractor.

(2) No bid limits shall be established for a subcontractor.

(3) A subcontractor shall submit with license application and renewals a statement of financial condition as prescribed by the board.

(4) A subcontractor shall furnish three references from any combination of the following: Licensed general contractors, registered professional engineers, or registered architects, for whom work has been completed, along with a statement of experience, personnel, and equipment.

(5) A subcontractor is not required to be licensed at the time a project is bid, but must be licensed with the board prior to beginning work on the project.

(6) A general contractor license and license number issued by the board to subcontractors shall denote subcontractor status.

(7) A subcontractor's application for license with the board shall be filed no less than 15 days prior to any regular meeting of the board.

(Acts 1935, No. 297, p. 721, § 13; Code 1940, T. 46, § 78; Acts 1959, No. 571, p. 1429, § 1; Acts 1989, No. 89-648, p. 1278, § 2; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1; Act 99-199, p. 251, § 3.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1996 amendment**, effective May 17, 1996, in subsection (a), inserted ", except a subcontractor who contracts with a licensed general contractor for the purpose of continuing to work after having been found to be working illegally as an unlicensed general contractor," and inserted "her," following "his,"; in subsection (b), in the first sentence deleted "whether he be a 'general contractor' as defined in Section 34-8-1(b) or a subcontractor" following "pool contractor", and in the second sentence inserted ", her," following "his"; and made nonsubstantive changes.

**The 1997 amendment**, effective January 1, 1998, in subsection (a) inserted the subdivision (1), (2) and (3) designators, in subdivision (1), as so designated, substituted "The" for "the" preceding "practice", substituted "which is" for "provided that such operation shall be" and substituted "and any work contracted out by the representative shall comply with the provisions of this chapter for 'general contractor'." for "; the", in

subdivision (2), as so designated, inserted "The" and substituted a concluding period for "; a subcontractor performing work under a properly licensed general contractor, except a subcontractor who contracts with a licensed general contractor for the purpose of continuing to work after having been found to be working illegally as an unlicensed general contractor, and", and in subdivision (3), as so designated, substituted "A" for "a" and substituted "provided that any of the work contracted out complies with the definition in this chapter for 'general contractor.'" for the concluding period; and added subsection (c).

**The 1999 amendment**, effective May 19, 1999, in subsection (a) added subdivisions (4) through (6); and made nonsubstantive changes.

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses  19(3).

**Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 11; Licenses §§ 35-36.

**§ 34-8-8. Copy of chapter to be included in plans of owners, architects, and engineers; inclusion of license number on bid.** [Historical Notes](#) [References](#)  
[Annotations](#)

(a) All owners, architects, and engineers preparing plans and specifications for work to be contracted in Alabama pursuant to this chapter shall include in their invitations to bidders, including but not limited to all public and private advertisements, and their specifications a copy of this chapter or the portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident or nonresident of this state and whether a license has been issued to him or her or not, the information that it will be necessary for him or her to show evidence of license before his or her bid is considered. Any person including an owner, architect, or engineer who violates this section shall be guilty of a Class B misdemeanor and shall for each offense of which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

(b) All owners, architects, and engineers receiving bids pursuant to this chapter shall require the person, firm, or corporation to include his or her current license number on the bid. The owner, architect, and engineer shall reject all bids that do not contain the current license number of the general contractor submitting the bid. All persons who violate this subsection shall be guilty of a Class C misdemeanor and shall for each offense for which he or she is convicted be punished, fined, or both, in accordance with Sections 13A-5-7 and 13A-5-12.

(Acts 1935, No. 297, p. 721, § 14; Code 1940, T. 46, § 79; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1996 amendment**, effective May 17, 1996, designated the existing text as subsection (a) and added subsection (b); in subsection (a), as so designated, inserted "owners," deleted "the state of" preceding "Alabama", inserted "pursuant to this chapter", inserted ", including but not limited to all public and private advertisements,", substituted "he or she" for "he", substituted "him or her" for "him" in two places, substituted "his or her" for "his", and added the second sentence; and made nonsubstantive changes.

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Licenses  25.

#### Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Licenses §§ 41, 45-46.

## ANNOTATIONS

### CASENOTES

**Cited** in *Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co.*, 376 So.2d 703 (Ala.1979).

#### § 34-8-9. Issuance of building permits. [Historical Notes](#) [References](#) [Annotations](#)

Any person, firm, or corporation, upon making application to the building inspector or such other authority of any incorporated city, town, village, or county in Alabama charged with the duty of issuing building or other permits for the construction, alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition of any building, highway, sewer, structure site work, grading, paving or project or any improvement where the cost of the undertaking is fifty thousand dollars (\$50,000) or more, shall, before he or she shall be entitled to the issuance of permits, furnish satisfactory proof to the inspector or authority that he or she is duly licensed under this chapter. It shall be unlawful for the building inspector or other authority to issue or allow the issuance of the building permit unless and until the applicant has furnished evidence that he or she is either exempt from this chapter or is duly licensed under this chapter to carry out or superintend the work for which the permit has been applied. The building inspector, or other authority, violating the terms of this section shall be guilty of a Class C misdemeanor and shall for each offense of which he or she is convicted be punished in accordance with Sections 13A-5-7 and 13A-5-12.

(Acts 1935, No. 297, p. 721, § 15; Code 1940, T. 46, § 80; Acts 1947, No. 402, p. 293, § 1; Acts 1959, No. 571, p. 1429, § 1; Acts 1987, No. 87-175, p. 236, § 3; Acts 1996, No. 96-640, p. 1013, § 1; Acts 1997, No. 97-270, p. 486, § 1.)

## HISTORICAL NOTES

## HISTORY

### Amendment notes:

**The 1996 amendment**, effective May 17, 1996, substituted "he or she" for "he" and substituted "the" for "such" throughout the section; in the first sentence substituted "twenty thousand dollars (\$20,000)" for "to be \$20,000.00"; substituted ". It" for "; and it" so as to create the second sentence; substituted ". The" for "; and such" so as to create the third sentence, and in such sentence deleted "such" preceding "authority", inserted "Class C", and substituted "shall for each offense of which he or she is convicted be punished in accordance with Sections 13A-5-7 and 13A-5-12 of the Code of Alabama 1975" for "subject to a fine of not more than \$50.00"; and made nonsubstantive changes.

**The 1997 amendment**, effective January 1, 1998, inserted ", alteration, maintenance, repair, rehabilitation, remediation, reclamation, or demolition", inserted "structure site work,", inserted "paving or project", and substituted "of the undertaking is fifty thousand dollars (\$50,000)" for "thereof is twenty thousand (\$20,000)".

### Code Commissioner's Notes

In 1996, the Code Commissioner, in the next to last sentence, inserted "the" before "permit has been applied." for grammatical purposes.

## REFERENCES

### LIBRARY REFERENCES

#### American Digest System:

Municipal Corporations ☒ 621.

#### Corpus Juris Secundum:

C.J.S. Municipal Corporations §§ 163-171.

## ANNOTATIONS

### CASENOTES

Generally 1 ..... enter p

#### 1. Generally

Builder's act of obtaining building permit for another builder in violation of general-contractor licensing statutes did not provide owner of building a cause of action for negligence against builder who obtained permit; licensure statutes were not enacted for benefit of owner as distinguished from the public generally. Thomas Learning Center, Inc. v. McGuirk, 766 So.2d 161 (Ala.Civ.App.1998), rehearing denied, certiorari quashed. Negligence ☒ 1205(2)

**Cited** in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

### § 34-8-10. Indictment or complaint. [References](#) [Annotations](#)

In all prosecutions for the violation of the provisions of Section 34-8-6 for engaging in the business of general contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit or complaint that "A. B. unlawfully

engaged in business as a general contractor, without authority from the licensing board for contractors so to do."

(Acts 1935, No. 297, p. 721, § 16; Code 1940, T. 46, § 81; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses  42.

**Corpus Juris Secundum:**

C.J.S. Licenses § 85.

## ANNOTATIONS

### CASENOTES

**Cited** in Dixie Store Fixtures & Sales Co. v. Supreme Fixture Co., 376 So.2d 703 (Ala.1979).

## ARTICLE 2. STATE LICENSING BOARD.

## REFERENCES

### ADMINISTRATIVE CODE

4 Ala. Admin. Code 230-X-2-.01 et seq., Licensing Board for General Contractors; Description of Organization.

### § 34-8-20. Creation; composition; appointment and removal of members.

#### Historical Notes    References

In order to safeguard life, health, and property and to promote the general public welfare by requiring that only properly qualified persons be permitted to engage in general contracting, there shall be a State Licensing Board for General Contractors, consisting of five members, who shall be appointed by the Governor. Each of the members shall be a general contractor, within the meaning of this chapter, with at least 10 years' experience in the field as a contractor. At least one member of the board shall have as a larger part of his or her business the construction of highways. At least one member of the board shall have as a larger part of his or her business the construction of public utilities. At least one member shall have as a larger part of his or her business the construction of buildings. The members of the board shall be appointed for one, two, three, four, and five years respectively, their terms of office expiring on December 31 of those years. Thereafter, on the thirty-first day of December in each year the Governor

shall appoint to fill the vacancies caused by the expiration of the term of office a member for a term of five years. In appointing members to the board, the Governor shall select those persons whose appointments, to the extent possible, ensure that the membership of the board is inclusive and reflects the racial, gender, urban/rural, and economic diversity of the state. Each member shall hold over after the expiration of his or her term until his or her successor shall be duly appointed and qualified. If a vacancy shall occur on the board for any cause, the vacancy shall be filled by the appointment of the Governor, and the Governor may remove any member of the board at any time, with or without cause. (Acts 1935, No. 297, p. 721, § 2; Code 1940, T. 46, § 66; Acts 1959, No. 571, p. 1429, § 1; Acts 1996, No. 96-640, p. 1013, § 1; Act 99-199, p. 251, §§ 2, 3; Act 2003-142, p. 441, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 17, 1996, substituted "the" for "such", substituted "the" or "those" for "said", and substituted "his or her" for "his" throughout the section; in the second sentence deleted "such" preceding "a contractor"; in the last sentence deleted ", and the Governor may remove any member of the board at any time, with or without cause" preceding the concluding period; and made nonsubstantive changes.

**The 1999 amendment**, effective May 19, 1999, added ", and the Governor may remove any member of the board at any time, with or without cause".

**The 2003 amendment**, effective June 13, 2003, added the eighth sentence.

#### **Code Commissioner's Notes**

Section 2, Acts 1987, No. 87-175 provides: "The existence and functioning of the Licensing Board for General Contractors, created pursuant to Section 34-8-20, specifically, and Sections 34-8-1 through 34-8-27, generally, of the Code of Alabama 1975 are hereby continued, and such code sections are hereby expressly continued."

Section 2 of Acts 1990, No. 90-108 provides: "The existence of the general contractors board, created and functioning pursuant to sections 34-8-1 through 34-8-27, Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1991, No. 91-197, § 2 provides: "The existence of the state licensing board for general contractors, created and functioning pursuant to sections 34-8-1 through 34-8-27 of the Code of Alabama 1975, is hereby continued, and said code sections are hereby expressly preserved."

Acts 1995, No. 95-193, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 99-199, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2003-142, § 2, provides: "The existence and functioning of the State Licensing

Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued until October 1, 2004, and those code sections are expressly preserved."

Act 2004-75, § 2 provides: "The existence and functioning of the State Licensing Board for General Contractors, created and functioning pursuant to Sections 34-8-1 to 34-8-28, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses ☒21; States ☒45.

**Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38; States §§ 79-80, 82, 136.

#### § 34-8-21. Oath of board. [References](#)

Each member of the board shall before entering upon the discharge of the duties of his office take and file with the Secretary of State the oath required by Section 279 of the Constitution of Alabama.

(Acts 1935, No. 297, p. 721, § 3; Code 1940, T. 46, § 67; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses ☒21.

**Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

#### § 34-8-22. Officers; bonds; compensation and expenses; rules and regulations.

#### [Historical Notes](#)   [References](#)

When the Governor appoints the board, he or she shall designate and commission one member as the chairperson, another as vice-chairperson, and another as secretary-treasurer. The board may make the bylaws, rules, and regulations as it shall deem best, provided the same shall not conflict with the laws of the State of Alabama. The secretary-treasurer shall give bond in the sum as the board shall determine with the surety as shall be approved. The bond shall be conditioned upon the faithful performance of the duties of the office and for the faithful accounting of all moneys and other properties as shall come into his or her hands. Each member of the board shall receive two hundred dollars (\$200) per day for attending sessions of the board or its committees, and for time

actually spent in necessary travel in attending meetings of the board or its committees and in addition shall be reimbursed for necessary travel expenses as are paid to state employees incurred in carrying out this chapter. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized compensations, office rent, and supplies shall be paid out of the State Licensing Board for the General Contractors' Fund in the State Treasury in the manner provided in Section 34-8-25, provided, that no funds shall be withdrawn or expended except as budgeted and allotted according to the provisions of Article 4 of Chapter 4 of Title 41, and only in the amounts as stipulated in the general appropriation bill.

(Acts 1935, No. 297, p. 721, § 4; Code 1940, T. 46, § 68; Acts 1951, No. 835, p. 1466, § 1; Acts 1959, No. 571, p. 1429, § 1; Acts 1980, No. 80-698, p. 1404, § 1; Acts 1996, No. 96-640, p. 1013, § 1.)

## HISTORICAL NOTES

### HISTORY

#### Amendment notes:

**The 1996 amendment**, effective May 17, 1996, substituted "the" for "such" and for "said", "The" for "Said", "he or she" for "he", and "his or her" for "his" throughout the section; in the first sentence substituted "the chairperson" for "chairman" and substituted "vice-chairperson," for "vice-chairman"; in the second sentence substituted "may" for "shall have the power to"; substituted ". The bond" for ", said bond" so as to create the fourth sentence, and in such sentence substituted "shall be conditioned" for "to be conditioned" and substituted "the office" for "his office"; in the fifth sentence substituted "two hundred dollars (\$200)" for "\$50.00" and substituted "travel expenses as are paid to state employees" for "traveling and clerical expenses"; and made nonsubstantive changes.

## REFERENCES

### ADMINISTRATIVE CODE

4 Ala. Admin. Code 230-X-2-.01 et seq., Licensing Board for General Contractors; Description of Organization.

### LIBRARY REFERENCES

#### American Digest System:

Licenses  21.

#### Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

### RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Contractors' Bonds § 2, Statutory References.

## § 34-8-23. Seal. [References](#)

The board shall adopt a seal for its own use. Such seal shall have the words "License Board for Contractors, State of Alabama," and the secretary shall have the charge, care



and custody thereof.

(Acts 1935, No. 297, p. 721, § 5; Code 1940, T. 46, § 69; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Licenses  21.

#### **Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

### **§ 34-8-24. Meetings; quorum.** [Historical Notes](#) [References](#)

The board shall have four regular meetings in each year, one in January, one in April, one in July, and one in October, for the purpose of transacting business which may properly come before it, and as many special or adjourned meetings as the board may deem necessary, on call of the chair of the board. Special or adjourned meetings may be held at the time the board provides in the bylaws or at a time the board may provide by reasonable resolution. Due notice of each regular meeting and the time and place thereof shall be given to each member by mail at least one week prior to the meeting. Three members of the board shall constitute a quorum.

(Acts 1935, No. 297, p. 721, § 6; Code 1940, T. 46, § 70; Acts 1959, No. 571, p. 1429, § 1; Acts 1986, No. 86-557, p. 1133, § 3; Acts 1996, No. 96-640, p. 1013, § 1.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 17, 1996, in the first sentence, substituted "business which" for "such business as" and substituted "chair" for "chairman"; in the second sentence, substituted "the time" for "such time as", substituted "provides in" for "may provide by", deleted "it shall adopt" following "bylaws", and substituted "a time" for "such time as"; in the third sentence, substituted "regular meeting" for "meeting"; and made nonsubstantive changes.

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Licenses  21.

#### **Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

### **§ 34-8-25. Records and accounts.** [Historical Notes](#) [References](#)

The secretary-treasurer shall keep a record of the proceedings of said board, shall

receive and account for all the moneys derived from the operation of this chapter and shall deposit, or cause to be deposited, all such moneys in the State Treasury to the credit of the State Licensing Board for General Contractors; and said funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certificate or voucher certified by the secretary-treasurer of the board. Any funds remaining in the State Treasury to the credit of the State Licensing Board for General Contractors at the end of each year shall be paid into the General Fund of the state on or before January 15 in each succeeding year. The board has the right, however, at all times to retain a sum not in excess of \$30,000.00 to meet any emergency that may arise which may affect its efficient operation.

(Acts 1935, No. 297, p. 721, § 7; Code 1940, T. 46, § 71; Acts 1951, No. 835, p. 1466, § 2; Acts 1975, No. 485, p. 1115, § 1; Acts 1991, No. 91-197, p. 361, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1991 amendment**, effective July 3, 1991, deleted "and approved by the Governor" at the end of the first sentence.

## REFERENCES

### LIBRARY REFERENCES

#### **American Digest System:**

Licenses  21, 33.

#### **Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38, 71.

**§ 34-8-26. Register of applicants; roster of contractors; annual report; investigation and report of complaints.** [References](#)

The secretary-treasurer shall keep a record of the proceedings of the board and a register of the applicants for license, showing for each the date of application, name, qualifications, place of business and whether the license was granted or refused. The books and register of this board shall be prima facie evidence of all matters recorded therein, and a certified copy of such books or register, under the seal of the board, attested by its secretary, shall be received in evidence in all courts in this state in lieu of the original.

A roster showing the names and places of business of all licensed general contractors shall be prepared by the secretary of the board as soon as convenient after the board first meets each year. Such roster, which shall include a copy of the licensing law, shall be printed by the board out of funds of said board, as provided in Section 34-8-25, and a copy mailed to and placed on file by the clerk of each incorporated city and town in the state and to and by the probate judge of each county in the state.

On or before March 1 of each year, the board shall submit to the Governor a report of its transactions for the preceding year and shall file with the Secretary of State a copy of such report, together with a complete statement of receipts and expenditures of the board, attested by the affidavit of the chairman and secretary and a copy of said roster of licensed general contractors.

It shall be the duty of the secretary-treasurer to investigate and report to the board each complaint filed relative to violation of this chapter.

(Acts 1935, No. 297, p. 721, § 8; Code 1940, T. 46, § 72; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses  21, 24.

**Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects § 4; Licenses §§ 37-38.

#### **§ 34-8-27. Appeals.** [References](#)

Any party aggrieved by any decision of the State Licensing Board, either in denying an application for license as a general contractor or in revoking a license, may appeal to the Circuit Court of Montgomery County by filing a bond with the clerk of said court, conditioned to pay all costs of the appeal. Upon notice of said appeal being served upon the Licensing Board, an issue shall be made up by the court between the appellant and the Licensing Board, in which the appellant shall allege in what respect the action of the Licensing Board was erroneous and prejudicial to him; whereupon the court shall hear the evidence and, without regard to the decision of the Licensing Board, shall render such decision as the court is of the opinion the Licensing Board should have rendered in the first instance.

(Acts 1935, No. 297, p. 721, § 17; Code 1940, T. 46, § 82; Acts 1959, No. 571, p. 1429, § 1.)

## REFERENCES

### LIBRARY REFERENCES

**American Digest System:**

Licenses  22, 38.

**Corpus Juris Secundum:**

C.J.S. Agriculture § 4.5; Architects §§ 9-10; Licenses §§ 43, 48, 50-63.

#### **§ 34-8-28. Disposition of funds; annual report.** [Historical Notes](#) [References](#)

(a) An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2, and an amount of fifty dollars (\$50) from the fees required for application and renewal of the

license of a subcontractor pursuant to Section 34-8-7, shall be distributed by the State Licensing Board for General Contractors at the end of each fiscal year to all accredited public institutions of higher education offering American Council for Construction Education accredited courses in building science, and to all accredited public institutions of higher education offering courses in building science which are in the candidate status of the American Council for Construction Education and to institutions of higher education offering courses leading to a bachelor of civil engineering degree which offers courses in highway engineering and construction at the undergraduate and graduate levels and whose civil engineering program is accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET). Funds identified by the general contractors and subcontractors for building science shall be distributed pro rata among institutions based upon the number of full-time equivalent students enrolled in the department of building science at the institution. Funds identified by the general contractors and subcontractors for civil engineering shall be distributed pro rata among institutions based upon the number of full-time equivalent civil and pre-civil engineering students enrolled at the institution.

(b) Revenue derived from the additional fees for all licenses shall be distributed for (1) building science (general construction) purposes and (2) civil engineering (highway engineering or construction, or both) purposes. Contractors shall be given an opportunity to select which program they want to support.

(c) Revenues derived from the additional fees for all licenses that are not specifically designated by contractors for one of the purposes above, shall be distributed between the programs defined in subsection (a) in a pro rata manner based on the number of full-time equivalent students enrolled in each program at each institution.

(d) Each institution receiving funds pursuant to this article for building science purposes shall utilize the funds for research projects relating to the construction industry, for faculty development, for program enhancement, and for continuing education programs related to construction. The funds shall be administered by a committee appointed by the dean responsible for the building science program, and shall include the head of the department of building science, or comparable position, faculty representatives, and representatives of the building science industry advisory committee of the institution.

(e) Each institution receiving funds pursuant to this article for civil engineering purposes shall utilize the funds to enhance activities in the highway engineering or construction area, or both. This includes but is not limited to scholarships, fellowships, research, faculty development, and continuing education. Funds received pursuant to this article shall be administered by a committee appointed by the dean of engineering. The committee should undertake, as part of its mission, to work with the public and private sectors of the highway industry to encourage student participation in co-op and summer industry employment programs as well as to lead students toward career employment in the highway industry upon graduation.

(f) Each institution receiving funds pursuant to this article shall provide to the board an annual report on or before January 31 for the preceding fiscal year during which the institution received the funds. This report shall disclose the total amount of funds received by the institution pursuant to this article and shall provide an accurate accounting for the utilization of the funds. The report shall disclose sufficient detail to

demonstrate compliance with the utilization specifications prescribed in subsections (d) and (e). Responsibility for the reports shall be retained by the administrative committees formed pursuant to subsections (d) and (e) and the dean appointing the committee.

(g) The board shall retain an amount of five percent of the amount to be distributed pursuant to subsection (a) as a fee for administrative expenses associated with the collection and distribution of the funds.

(h) The provisions of this amendatory section are remedial and curative and shall be retroactive to January 1, 1998.

(Acts 1991, No. 91-473, p. 857, §§ 1-4; Acts 1993, No. 93-614, p. 1006, § 1(11); Acts 1996, No. 96-640, p. 1013, § 1; Act 2003-142, p. 441, § 3.)

## HISTORICAL NOTES

### HISTORY

#### **Amendment notes:**

**The 1996 amendment**, effective May 17, 1996, substituted "the" for "such" and "The" for "Such" throughout the section; in subsection (a), deleted the former first sentence, which provided for an additional \$100 fee to be paid at the time of application or renewal of licenses, in the present first sentence substituted "An amount of one hundred dollars (\$100) from the fees required for application and renewal for certification and registration of general contractors in Section 34-8-2 shall be distributed by" for "The revenue derived from such additional fees shall be distributed by" and substituted "fiscal year" for "licensing period"; in subsection (d), in the first sentence substituted "engineering or construction area, or both" for "engineering and/or construction area"; added new subsections (e) and (f); and made nonsubstantive changes.

**The 2003 amendment**, effective June 13, 2003, in subsection (a) inserted ", and an amount of fifty dollars (\$50) from the fees required for application and renewal of the license of a subcontractor pursuant to Section 34-8-7," and inserted "and subcontractors" in two places; in subsection (b) substituted "shall be distributed" for "will be distributed", substituted "or construction, or both" for "and/or construction"; designated subsections (c) through (f) as subsections (d) through (g); designated subsection (c); in subsection (e) inserted "received"; in subsection (f) substituted "(d) and (e)" for "(c) and (d)" in two places, and substituted "dean appointing the committee" for "appointing dean thereof"; and added subsection (h).

## REFERENCES

### **LIBRARY REFERENCES**

#### **American Digest System:**

Licenses  33.

#### **Corpus Juris Secundum:**

C.J.S. Licenses § 71.

## Board Members

**WAYNE GORDON**  
*Chairman*  
**BIRMINGHAM**

**FOY TATUM**  
*Vice Chairman*  
**MONTGOMERY**

**KEITH ANDREWS**  
*Secretary-Treasurer*  
**TUSCALOOSA**

**CHIP GRIZZLE**  
*Member*  
**BIRMINGHAM**

**ALEX WHALEY, SR.**  
*Member*  
**TROY**



### **ALABAMA LICENSING BOARD FOR GENERAL CONTRACTORS**

(www.genconbd.state.al.us)

**JOSEPH C. ROGERS, JR.**  
**EXECUTIVE SECRETARY**

**2525 FAIRLANE DRIVE**  
**MONTGOMERY, ALABAMA 36116**

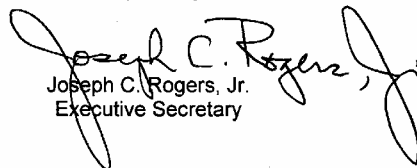
**TELEPHONE NO. 334-272-503**  
**FAX NO. 334-395-5336**

**May 3, 2006**

#### **For Examiners of Public Accounts Board Member Information**

<b>Name</b>	<b>Address</b>	<b>Term Expires</b>
<b>Board Member</b>		
Hon. Wayne Gordon Chairman	3238 Heathrow Downs Hoover, AL 35226	12/31/2008
Hon Foy Tatum Vice Chairman	Halstead Contractors 5455 Troy Highway Montgomery, AL 36116	12/31/2007
Hon. Keith Andrews Secretary-Treasurer	RaCon Inc 7300 Commerce Street Tuscaloosa, AL 35401	12/31/2006
Hon. Chip Grizzle Member	Brasfield & Gorrie 729 South 30 <sup>th</sup> Street Birmingham, AL 35233	12/31/2010
Hon. Alex Whaley Sr. Member	Whaley Construction Co Inc 309 Madison Street Troy, AL 36081	12/31/2009
<b>Official</b>		
Mr. Joseph C. Rogers Executive Secretary (P) 334-272-5030 (F) 334-395-5336	Licensing Board for General Contractors 2525 Fairlane Drive Montgomery, AL 36116	

Respectfully,

  
Joseph C. Rogers, Jr.  
Executive Secretary

JCR/jg